12-18-89
Vol. 54 No. 241
Pages 51737-51866

federal register

Monday
December 18, 1989

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-89-095FR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Relaxation of Minimum Size Requirements for Texas Grapefruit and Container Requirements for Texas Oranges and Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule an interim final rule, which delayed implementation of a final rule tightening minimum size requirements for fresh Texas grapefruit shipments until the 1990–91 shipping season and each season thereafter. Under the earlier final rule, the minimum size requirements for grapefruit would have been tightened in 1989 to prohibit the shipment of any grapefruit smaller than pack size 96 during the period November 16 through January 31 each season. The interim final rule also authorized Texas orange and grapefruit handlers to use two additional containers for shipping fresh fruit to market. This rule is expected to help the Texas citrus industry to continue to successfully market the 1989–90 orange and grapefruit crops.

DATES: The container requirements for Texas oranges and grapefruit became effective October 11, 1989, and the effective date of the January 24, 1989 (54 FR 3420) rule tightening minimum size requirements for Texas grapefruit was delayed until February 1, 1990, under the interim final rule (54 FR 41583, October 11, 1989). This final rule becomes effective December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 906, both as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1, and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 78 handlers of oranges and grapefruit subject to regulation under the marketing order for oranges and grapefruit grown in Texas. In addition, there are about 2,500 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and agricultural services firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The interim final rule delayed the effective date of an increase in grapefruit size requirements (7 CFR 906.365) and authorized two containers for oranges and grapefruit on a permanent basis (7 CFR 906.340). That rule was issued October 5, 1989, and published on October 11, 1989 in the **Federal Register** (54 FR 41583). It provided that interested persons could file written comments through November 13, 1989. No comments were received. These actions were unanimously recommended by the Texas Valley Citrus Committee (committee) on August 1, 1989. The committee administers the marketing order locally.

Section 906.365 specifies minimum grade and size requirements for fresh shipments of oranges and grapefruit grown in Texas. The minimum size requirements require fresh grapefruit to be at least pack size 96 (3 $^{9}/_{16}$ inches in diameter), except that grapefruit grading at least U.S. No. 1 may be shipped if they are at least pack size 112 (3 $^{5}/_{16}$ inches in diameter). These requirements are in effect on a continuous basis from season to season unless changed. Under a final rule (54 FR 3420, January 24, 1989), minimum size requirements for fresh Texas grapefruit would have been tightened effective November 16, 1989, to prohibit shipments of pack size 112 grapefruit grading at least U.S. No.1 during the period November 16 through January 31 each season. The interim final rule delayed the effective date of that rule until February 1, 1990 to permit such grapefruit to be shipped throughout the entire 1989–90 season. That delay reflected crop and marketing conditions which made implementation of the final rule for the 1989–90 season impracticable. In addition, the interim final rule similarly delayed the effective date of miscellaneous changes made by the earlier final rule to delete obsolete language and to update references to be U.S. Standards for Grades of Oranges and Grapefruit in § 906.365.

Due to freeze damage in February 1989, the industry is experiencing good marketing opportunities for size 112 grapefruit this season due to a reduced supply of smaller sized Texas grapefruit. In addition, the committee expects that the juice market, the major alternative outlet for small Texas grapefruit, will be depressed this season.

Allowing the use of smaller size 112 grapefruit in fresh markets this entire season will provide handlers and growers in the production area the

opportunity of obtaining greater returns. The committee believes that the 1990–91 season growing and marketing conditions will have returned to normal, and thus, the tighter grapefruit size requirements should become effective during the November 16 through January 31 period during the 1990–91 season and each season thereafter. The tighter requirements are intended to provide more desirable sizes with more acceptable maturity and flavor during the peak demand period during the season and to enable Texas grapefruit to more effectively compete with grapefruit from Florida during that period. The committee also believes that by the 1990–91 season, growing and marketing conditions will have returned to normal, and the tighter size requirements should be in place at that time.

Section 906.340 (7 CFR 906.340) specifies container, pack, and container marking requirements on a continuous basis for fresh shipments of oranges and grapefruit grown in Texas. These current container requirements require Texas orange and grapefruit handlers to use specific containers for shipping fresh fruit to market. The interim final rule authorized handlers to use two additional containers, both of which were used on an experimental basis last season and found to be suitable for shipping fresh citrus to market. The additional containers provide Texas citrus handlers more flexibility in packing and shipping their fruit. One of these containers is a poly or vexar bag with a capacity of four pounds of fruit, which may be used only for shipping oranges. The other container is a mesh type bag with a capacity of ten pounds of fruit. Both of these containers must be packed in the matter container specified in paragraph (a)(1)(iii) of this section.

The interim final rule also made conforming changes necessary in paragraph (a)(1)(iii) to permit the master container authorized under that paragraph to be used for the two newly authorized containers. In addition, a change was made for clarity to paragraph (a)(1)(ix) which is redesignated as paragraph (a)(1)(xi). Container requirements are designed to ensure that fresh citrus is packed in suitable containers, so that it arrives in the marketplace in good condition.

The committee meets each season to review the handling requirements for Texas oranges and grapefruit, which are in effect on a continuous basis. Committee meetings are open to the public, and interested persons may express their views at these meetings. The U.S. Department of Agriculture (Department) reviews committee recommendations and information submitted by the committee and other available information to determine whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

Texas orange and grapefruit shipments to fresh markets in the United States, Canada, and Mexico are subject to handling requirements effective under this marketing order. Exempt from such handling requirements are shipments made: (1) Within the production area (Cameron, Hidalgo, and Willacy counties in Texas; (2) in individually addressed gift packages aggregating not more than 500 pounds which are not for resale; (3) under the order's current 400 pound minimum quantity exemption provisions, and (4) for relief, charity, and home use. In addition, fruit shipped to approved processors for processing may be exempted from the handling requirements.

Section 8e of the Act (7 U.S.C. 608e–1) provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity into the United States are prohibited unless they meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. Section 8e also provides that whenever two or more current marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area produces the commodity in most direct competition with the improved commodity. Imports anywhere in the United States must then meet the quality standards set for that particular area.

Minimum grade and size requirements for grapefruit imported into the United States are specified in § 944.106 (7 CFR part 944), and are effective under section 8e of the Act. These import requirements are based upon Florida grapefruit requirements issued under M.O. 905 (7 CFR part 905), and require imported grapefruit to meet the same minimum grade and size requirements as those specified for the various varieties of Florida grapefruit in Table I of paragraph (a) in § 905.306. Accordingly, the findings and determinations for imported grapefruit in part 944 would not be changed by this action and no change in the provisions of part 944 is necessary. Thus, import requirements would continue to be based upon Florida grapefruit requirements under M.O. 905.

This action reflects the committee's and the Department's appraisal of the need to maintain the changed requirements and delay the effective date of the tighter size requirements for grapefruit. The Department's view is that this action will have a beneficial impact on producers and handlers because it will permit 1989–90 season grapefruit shipments to continue to be made consistent with anticipated crop and market conditions. The application of handling requirements to Texas oranges and grapefruit over the past several years has been beneficial to the Texas citrus industry in marketing their crop.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the final rule finalizing the interim final rule, as published in the **Federal Register** (54 FR 41583, October 11, 1989), will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action adopts without change the provisions of the interim final rule; (2) shipment of the 1989–90 season Texas citrus crop is currently under way; (3) the interim final rule provided a 30-day comment period, and no comments were received; and (4) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Texas.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule delaying the November 16, 1989 effective date of a final rule amending the provisions of § 906.365 (54 FR 3420, January 24, 1989), until February 1, 1990; and amending the provisions of § 906.340, which was published in the **Federal Register** (54 FR 41583, October

11, 1989), is adopted as a final rule without change.

Note.—This action will appear in the Code of Federal Regulations.

Dated: December 13, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-29349 Filed 12-15-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 506

[No. 89-469]

OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act

Date: December 7, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision ("Office") is adding 12 CFR part 506 in order to display control numbers assigned by the Office of Management and Budget ("OMB") pursuant to the Paperwork Reduction Act of 1980, as amended, to information collection requirements contained in the Office's regulations.

EFFECTIVE DATE: December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Colleen Devine, Acting Director, Directives Management Division, (202) 906-6025, or Mary J. Hoyle, Paralegal Specialist, Regulations and Legislation Division, (202) 906-7135, Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Office of Thrift Supervision is collecting and displaying the control numbers assigned to the information collection requirements contained in its regulations by the Office of Management and Budget, pursuant to the Paperwork Reduction Act, Public Law 96-511, 94 Stat. 2812, as amended. The Office is publishing such control numbers in compliance with the requirements of 5 CFR 1320.7.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(a)(2), the Office has determined that this rule is not subject either to the notice and comment or delayed effective date requirements of the Administrative Procedure Act.

Regulatory Flexibility Analysis

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) do not apply.

Executive Order 12291

Because this rule relates to agency management, the provisions of Executive Order 12291 do not apply.

List of Subjects in 12 CFR Part 506

Paperwork, Reporting and recordkeeping requirements, Collection of information.

Accordingly, the Office hereby amends subchapter A, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

1. Part 506 is added to read as follows:

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

Authority: Sec. 2(a), 94 Stat. 2812, as amended (44 U.S.C. 3501 *et seq.*), 5 CFR 1320.7.

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This part collects and displays the control numbers assigned to information collection requirements contained in regulations of the Office of Thrift Supervision by the Office of Management and Budget ("OMB") pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511, as amended, and is adopted in compliance with the requirements of 5 CFR 1320.7.

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
Part 528	1550-0021
543.9	1550-0007
544.2	1550-0017
544.5	1550-0018
545.74	1550-0013
545.82	1550-0033
545.96(c)	1550-0011
545.113(b)	1550-0011
552.4	1550-0017
552.5	1550-0018
552.11	1550-0011
563.1(b)	1550-0011
563.10	1550-0027
563.41	1550-0034
563.45	1550-0002
563.47(e)	1550-0011
563.48(c)	1550-0011
563.90	1550-0011
563.93(c)	1550-0011
563.98(g)	1550-0029
563.131(c)	1550-0028
563.132	1550-0033
563.172(a)	1550-0011
563.173(e)	1550-0011
563.174(e)	1550-0011
563.174(f)	1550-0011
563.177	1550-0041
563.183(b)	1550-0032
563.233(b)	1550-0011
Part 563(b)	1550-0014
563c.10(c)	1550-0011
Part 563d	1550-0019
563e.4 through 563e.6	1550-0012
Part 563g	1550-0035
566.4(b)	1550-0011
574.4	1550-0032
574.5(b)	1550-0032

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29324 Filed 12-15-89; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-169-AD; Amdt. 39-6420]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model BAe 146-100, -200A, and -300A series airplanes, which requires inspection of the aileron disconnect units (ADU's) and modification or replacement, if necessary. This amendment is prompted by reports of the ADU failing to cock and/or release when tested. This condition, if not corrected, could lead to loss of all roll control should a jam in the aileron flight control system occur.

DATE: Effective January 14, 1990.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-

1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a airworthiness directive, applicable to British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, which requires inspection of the aileron disconnect units, and replacement or modification, if necessary, was published in the **Federal Register** on October 3, 1989 (54 FR 40677).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule. After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 58 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for the modifications is $100. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $17,400.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(9) (Revised Pub. L. 97-449, January 12 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to British Aerospace (BAe) Model 146-100A, -200A and -300A series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent loss of roll control should a jam in aileron control system occur, accomplish the following:

A. Within 60 days after the effective date of this AD:

1. Determine if Fraser Nash part Number A0-100-902 aileron disconnect units (ADU's) or Normalair-Garrett, Ltd. (NGL) part Numbers 1099R000, 1224R000, or 1295R000 ADU's are installed. If NGL part Number 1295R000 ADU's modified to British Aerospace (BAe) Modification HCM70212C (NGL Modification No. 5RM) configuration are installed, no further action is required.

2. Modify NGL part Number 1295R000 ADU's to BAe modification HCM70212C (NGL modification 5RM) configuration, in accordance with BAe Modification Service Bulletin 27-88 70212C, dated November 10, 1988.

3. Inspect Fraser Nash part Number A0-100-902 and NGL part Numbers 1099R000 and 1224R000 ADU's for dormant failure, in accordance with British Aerospace Inspection Service Bulletin 27-87, dated September 30, 1988. Replace any failed units with serviceable units prior to further flight.

B. For all airplanes equipped with NGL part Numbers 1099R000 and 1224R000 ADU's that have not been previously modified to BAe HCM 70212A&B (NGL Modification 3RM and 4RM) configuration:

1. Within one year after the effective date of this AD, modify NGL part Number 1099R000 and 1224R000 ADU's to BAe HCM70212A&B (NGL Modification 3RM and 4RM) and BAe HCM70212C (NGL Modification 5RM) configuration, in accordance with BAe Modification Service Bulletins 27-75-70212A&B, dated June 16, 1988, and 27-88-70212C, dated November 10, 1988.

Note: British Aerospace Modification Service Bulletin 27-75-70212A&B refers to NGL Service Bulletins 1099R-27-4 and 1224R-27-5. British Aerospace Modification Service Bulletin 27-88-70212C refers to NGL Service Bulletin 1295R-27-6, Revision 1, and NGL Service News Letter, dated September 12, 1988, for specific installation procedures.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 14, 1990.

Issued in Seattle, Washington, on November 30, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29046 Filed 12-15-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-ANE-44; Amendment 39-6398]

Airworthiness Directives; McCauley Accessory Division, Cessna Aircraft Company, Model 1A103/TCM6958 Fixed-Pitch Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection and rework of an area of the blade hub on McCauley Accessory Division, Cessna Aircraft Company, Model 1A103/TCM6958 fixed-pitch propellers. The AD is needed to prevent blade separation which could possibly lead to engine separation and loss of aircraft control.

DATE: *Effective:* January 31, 1990.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from McCauley Accessory Division, Cessna Aircraft Company, 3535 McCauley Drive, Vandalia, Ohio 45377, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Mr. Tomaso DiPaolo, Chicago Aircraft Certification Office, Propulsion Branch, ACE-140C, Small Airplane Certification Directorate, Aircraft Certification Service, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (312) 694-7031.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD which requires inspection and rework of an area of the blade hub on certain McCauley Accessory Division, Cessna Aircraft Company, Model 1A103/TCM6958 fixed-pitch propellers was published in the **Federal Register** on January 19, 1988 (53 FR 1373).

The proposal was prompted by an FAA determination that certain McCauley Accessory Division, Cessna Aircraft Company, Model 1A103/TCM6958 fixed-pitch propellers had evidence of scratches or tool marks on the propeller blade-to-hub forward face transition area. The scratches or tool marks can lead to fatigue cracks and subsequent propeller blade separation followed by possible engine separation and loss of aircraft control. There were two occurrences in service where complete propeller blade separation occurred. Since these conditions were likely to exist on other propellers of the same type design, the Notice of Proposed Rulemaking (NPRM) (53 FR 1373, January 19,1988) required dye penetrant inspection and rework of the propeller blade-to-hub forward face transition area to remove any indication of scratches or tool marks on certain McCauley Accessory Division, Cessna Aircraft Company, Model 1A103/TCM6958 propellers.

An opportunity to comment on the NPRM was extended to the public. No objections to the NPRM were received. However, discussions with FAA field offices indicated that, based on field reports, consideration should be given to expand the inspection area. Investigations revealed a single incident of cracks in the hub bolt holes. McCauley Service Bulletin 169B, dated June 9, 1989, was issued to expand the inspection area to include all the hub bolt holes. McCauley Service Bulletin 169C, dated September 22, 1989, was issued to reduce the inspection of the hub bolts holes to those adjacent to the leading edge of the propeller blade and with no changes to the inspection procedure of the propeller blade-to-hub forward face transition area.

The FAA concurs with the comments and will expand the inspection area. Inspecting the bolt holes will not significantly increase the required inspection time. Accordingly, the proposal is adopted with changes to the inspection/rework area to include the hub bolt holes adjacent to the leading edge of the propeller blade.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation involves 8,778 aircraft, and will cost approximately $120.00 per aircraft. This regulation will not have a significant economic impact since no repetitive inspection or rework will be required. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

McCauley Accessory Division, Cessna Aircraft Company: Applies to McCauley Accessory Division, Cessna Aircraft Company Model 1A103/TCM6958 fixed-pitch propellers installed on, but not limited to Cessna Aircraft Company Models 152 and A152 and Reims Aviation S. A. Models F152 and FA152 aircraft. Affected propeller serial numbers are 770001 through 777390 and BC-001 up to, but not including JA001.

Compliance is required within the next 100 hours time in service after the effective date of this AD, or before the accumulation of 1200 hours time in service, whichever occurs later, unless already accomplished.

To prevent possible fatigue cracks that can lead to blade separation near the hub, which could subsequently lead to engine separation and loss of aircraft control, accomplish the following:

(a) Inspect and rework the hub bolt holes adjacent to the leading edge of the propeller blade and the propeller blade-to-hub forward face transition area in accordance with the Appendix (McCauley Accessory Division Service Bulletin 169C, dated September 22, 1989) to this AD.

Note: Previous compliance with McCauley Accessory Division Service Bulletin 169B, accomplished prior to the effective date of this AD, does constitute compliance with the requirements of this AD.

(b) Remove from service prior to further flight any propeller which, after initial or final inspection following rework, shows evidence of cracks or other unairworthy conditions as described in the Appendix to this AD.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance time specified in this AD may be approved by the Manager, Chicago Aircraft Certification Office, ACE-115C, Small Airplane Certification Directorate, Aircraft Certification Service, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

This amendment becomes effective on January 31, 1990.

Issued in Burlington, Massachusetts, on November 6, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

Note: The appendix is not published in the **Federal Register.** It is available from New England Headquarters. See **ADDRESSES** section. This appendix contains McCauley

Accessory Division Service Bulletin 169C, dated September 22, 1989.

[FR Doc. 89-29041 Filed 12-15-89; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Surface Coal Mining and Reclamation Operations Under the Federal Lands Program; State-Federal Cooperative Agreements; Ohio

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is adopting an amendment to the cooperative agreement between the Department of the Interior and the State of Ohio for the regulation of surface coal mining and reclamation operations on Federal lands in Ohio. This final rule authorizes the State of Ohio to regulate coal exploration activities on Federal lands in Ohio under the terms of the cooperative agreement. This cooperative agreement is authorized under section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Federal regulations at 30 CFR 745.14 provide for amendments to cooperative agreements of this type.

EFFECTIVE DATE: January 17, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Columbus Field Office Director, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

Section 523(c) of SMCRA, 30 U.S.C. 1201 *et seq.*, and the implementing regulations at 30 CFR parts 740 and 745, allow a State and the Secretary of the Interior to enter into a cooperative agreement to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the State has an approved State program for the regulation of surface coal mining and reclamation operations, and the Secretary determines in writing that the State has the necessary personnel and funding to fully implement the agreement in accordance with SMCRA. The Federal regulations at 30 CFR 745.14 state that a cooperative agreement which has been approved pursuant to § 745.11 may be amended by mutual agreement of the Secretary and the Governor of a State.

On March 26, 1982, the State of Ohio requested a cooperative agreement between the Department of the Interior and State of Ohio to give the State primacy in the administration of its approved regulatory program on Federal lands in Ohio. The Secretary of the Interior (the Secretary) approved the cooperative agreement on February 22, 1984. Approval of the cooperative agreement was published on April 13, 1984 (49 FR 14735). The text of the existing cooperative agreement can be found at 30 CFR 935.30.

The approved cooperative agreement signed by the Secretary and the Governor of Ohio does not contain specific language regarding coal exploration on Federal lands in Ohio. On April 26, 1988, OSMRE sent a letter to the State outlining proposed amendments to the cooperative agreement to include this language and to make other minor changes regarding reference to an appendix to the agreement. In a letter dated May 13, 1988, the State of Ohio indicated that the proposed changes were acceptable to the State.

II. Summary of Amendment to the Cooperative Agreement

The text of the cooperative agreement is being amended to replace reference to the "Office of Surface Mining" with the "Office of Surface Mining Reclamation and Enforcement" and to replace all references to "OSM" with "OSMRE." The following sections of the cooperative agreement are also amended:

Article I.A.—Authority and Article VI.—Review of Permit Application Package

The authority provision of Article I.A. is amended to provide that Ohio's authority to regulate surface coal mining and reclamation operations on Federal lands includes coal exploration operations not subject to 43 CFR part 3480, subpart 3480 through 3487. In addition, Article VI has been amended to add the phrase "coal exploration" to the statement that identifies Ohio's responsibility for the review of permit application packages. The amended language is similar to the Federal regulation at 30 CFR 740.4(c)(6) which states that OSMRE may delegate to a State regulatory authority under a cooperative agreement the review and approval of exploration operations not subject to the requirements of 43 CFR parts 3480–3487. Therefore, the specific mention of exploration operations in Articles I and VI of the cooperative agreement with Ohio is in accordance with SMCRA and consistent with the Federal regulations.

Article XV.—Reservation of Rights and Appendix A

The Reservation of Rights provision at Article XV is amended to clarify that the agreement shall not be construed as waiving or preventing the assertion of any State or Federal rights that have not been expressly addressed in the agreement.

An appendix A has been added that consists of a list of the laws and regulations to which, at a minimum, the Reservation of Rights Provision applies. A reference to appendix A has also been added to Article XV.

The Federal regulations at 30 CFR 745.13 prohibit the Secretary from delegating certain authorities to States in State-Federal cooperative agreements. The revisions to Article XV and the addition of appendix A to the cooperative agreement should adequately clarify that certain rights are reserved by the Secretary and the State of Ohio under this cooperative agreement. The amendments are in accordance with SMCRA and consistent with the Federal regulations.

Surface Effects of Underground Mining

OSMRE had proposed to amend the authority provision of Article I.A. to state that Ohio's authority to regulate surface coal mining and reclamation operations on Federal lands also includes the surface effects of underground mining operations. However, since the Federal definition of "surface coal mining operations" at 30 CFR 700.5 includes the phrase "surface operations and surface impacts incident to an underground coal mining" OSMRE has determined that the specific mention in the cooperative agreement of surface effects resulting from underground mining operations is unnecessary and may have been confusing. Therefore, this change is not adopted. The Ohio cooperative agreement will continue to provide authority for Ohio to regulate surface coal mining operations on Federal lands in the State including surface impacts incident to underground mines.

III. Public Comments

The public comment period and opportunity to request a public hearing on the proposed rule published August 30, 1988 (53 FR 33150), ended on September 29, 1988. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony. Comments also were solicited from various Federal agencies with an actual or potential interest in the Ohio program. No substantive comments were received.

IV. Procedural Matters

Executive Order No. 12291 and the Regulatory Flexibility Act

On October 21, 1982, the Department of the Interior received from the Office of Management and Budget an exemption for State-Federal cooperative agreements from the requirements of sections 3 and 7 of Executive Order 12291.

The Department has reviewed this proposed agreement in light of the Regulatory Flexibility Act (Pub. L. 96–354). Having conducted this review, the Department has determined that this document will not have a significant economic effect on a substantial number of small entities because no significant departure from either the State or Federal requirements already in effect will occur and no new or additional information will be required by the proposed agreement.

National Environmental Policy Act

Proceedings relating to adoption or amendment of a permanent program State-Federal cooperative agreement are part of the Secretary's implementation of the Federal lands program pursuant to section 523 of the Act. Such proceedings are exempt under section 702(d) of the Act from the requirements to prepare a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This amendment to the Ohio Cooperative Agreement does not contain information collection requirements which require clearance from the Office of Management and Budget under 44 U.S.C. 3507.

Author

The author of this regulation is Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866–0578.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, title 30, chapter VI, subchapter T of the Code of Federal Regulations is amended as set forth below:

Dated: November 16, 1989.

Dave O'Neal,

Assistant Secretary—Land and Minerals Management.

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

§ 935.30 [Amended]

2. Section 935.30, State-Federal Cooperative Agreement, is amended to remove the words "Office of Surface Mining" as they appear in the first paragraph and add, in their place, the words "Office of Surface Mining Reclamation and Enforcement." In addition, all references to "OSM" throughout the text of the cooperative agreement are revised to read "OSMRE".

3. In § 935.30, State-Federal Cooperative Agreement, Article I.A., Article VI introductory text, and Article XV are revised and appendix A is added to read as follows:

§ 935.30 State-Federal Cooperative agreement.

* * * * *

Article I: Introduction, Purpose, and Responsible Administrative Agency

A. Authority: This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement with the Secretary of the Department of the Interior for State regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation of surface coal mining and reclamation operations and of coal exploration operations not subject to 43 CFR part 3480, subparts 3480 through 3487, on Federal lands in Ohio which are under the jurisdiction of the United States Department of Agriculture, Forest Service, except those lands containing leased Federal coal, consistent with State and Federal laws governing such activities in Ohio, the Federal lands program (30 CFR parts 740–745) and the Ohio State program (approved State program).

* * * * *

Article VI: Review of Permit Application Package

The Division shall assume the primary responsibility for the review of permit application packages for surface coal mining and reclamation and coal exploration operations on Forest Service lands covered by this Agreement. The Division shall coordinate the review of permit application packages with the Forest Service and other Federal agencies which may be affected by the proposed surface coal mining and reclamation operation to ensure compliance with Federal laws other than the Act and regulations other than the approved State program. When requested by the State, OSMRE shall assist the State in identifying Federal agencies other than the Forest Service which may be affected by the mining proposal.

* * * * *

Article XV: Reservation of Rights

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations, including but not limited to those listed in Appendix A.

Approved:

Richard F. Celeste,

Governor of Ohio.

Date: April 19, 1989.

Manuel Lujan,

Secretary of the Interior.

Date: December 11, 1989.

Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 43 CFR part 3480.
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR part 1500.
4. The Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR part 402.
5. The Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 *et seq.*, 48 Stat. 401.
6. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.
7. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.
8. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.
9. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.
10. The Reservoir Salvage Act of 1960, as amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

11. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.
12. Executive Order 11988 (May 24, 1977), for flood plain protection.
13. Executive Order 11990 (May 24, 1977), for wetlands protection.
14. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.
15. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*
16. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa, *et seq.*
17. The Constitution of the United States.
18. The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, as amended.
19. 30 CFR chapter VII.
20. The Constitution of the State of Ohio.
21. Ohio Revised Code, Chapter 1531.
22. Ohio Administrative Code, Chapter 1501.

[FR Doc. 89-29325 Filed 12-15-89; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

RIN 0905-AD03

Grants for Residency Training and Faculty Development in General Internal Medicine and General Pediatrics

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This rule amends the existing regulations implementing Grants for Residency Training and Faculty Development in General Internal Medicine and General Pediatrics to remove requirements that specific percentages of the training experience be devoted to providing continuity care experience to a defined panel of patients. The Department believes that the amendment will alleviate a burden on grantees and on grant applicants, and thus create greater flexibility for both the Department and the grantees in the administration of this grant program.

EFFECTIVE DATE: This final rule is effective December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Marilyn H. Gaston, M.D., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: (301) 443-6190.

SUPPLEMENTARY INFORMATION: On December 15, 1988, the Assistant Secretary for Health, with the approval of the Secretary, published in the **Federal Register** (53 FR 50407) a final rule amending the regulations that govern programs administered under section 784 of the Public Health Service Act (the Act) to add provisions for faculty development training in General Internal Medicine and General Pediatrics.

Specifically, subpart FF of part 57 of title 42 of the Code of Federal Regulations was amended by adding new project requirements for a faculty development program under § 57.3105, entitled *"Project requirements."*, and by rearranging and redesignating the paragraphs under this section.

To provide greater flexibility in the administration of this program by both grantees and the Department, this amendment deletes the requirement in redesignated § 57.3105(a)(11) (formerly § 57.3105(k)) that specific percentages of the residency training experiences be devoted to providing continuity care to a defined panel of patients. Specifically, the following language in the last sentence of the introductory text of paragraph (a)(11) and subparagraphs (i) through (iii) is being deleted:

> A resident's time in these settings must:
> (i) Comprise at least 10 percent of his or her total training time (excluding vacation time) during each year in the program (i.e., at least one-half day per week);
> (ii) Comprise at least 25 percent of his or her total training time (excluding vacation time) for the entire residency training period; and
> (iii) Be scheduled in at least nine months of each year of training.

This deletion is consistent with the recommendation included in a recent evaluation study of this grant program. The study found that a number of high quality programs were dissuaded from participation in the program because these specific requirements could not realistically be attained for their programs. It recommended that the requirement be reviewed and that the emphasis be placed on program content. The Department can focus grantee efforts on providing valuable continuity care experience to residents using the general requirement of § 57.3105(a)(11), without this restrictive regulatory provision.

Justification for Omitting Public Comment

The Department believes that the amendment will alleviate a burden on grantees and on grant applicants, and thus create greater flexibility for both the Department and the grantees in the administration of this grant program. The Secretary has therefore determined, according to 5 U.S.C. 553 and Department policy, that it would be both unnecessary and contrary to the public interest to obtain public comment on these regulations or to delay their effective date.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern financial assistance programs in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

The amendment does not affect the recordkeeping or reporting requirements for the Grants for Residency Training and Faculty Development in General Internal Medicine and General Pediatrics programs.

List of Subjects in 42 CFR Part 57

Dental health, Education of the disadvantaged, Educational facilities, Educational study program, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, 42 CFR part 57, subpart FF is amended as set forth below:

Dated: July 13, 1989.

James O. Mason,

Asistant Secretary for Health.

Approved: November 16, 1989.

Louis W. Sullivan,

Secretary.

(Catalog of Federal Domestic Assistance, No. 13.884, Grants for Residency Training in General Internal Medicine and General Pediatrics)

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

Subpart FF—Grants for Residency Training and Faculty Development in General Internal Medicine and General Pediatrics

1. The authority citation for subpart FF continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, 63 Stat. 35 (42 U.S.C. 216); sec. 784, Public Health Service Act, 90 Stat. 2315, as amended by 95 Stat. 922–923, and 99 Stat. 540 (42 U.S.C. 295g–4).

2. Section 57.3105 is amended by revising paragraph (a)(11) to read as follows:

§ 57.3105 Project requirements.

(a) * * *

(11) Make provision for each resident to serve a panel of patients and/or families who recognize him or her as their provider of longitudinal and comprehensive (including preventive and psychosocial) health care. The panel must be sufficiently numerous and varied to provide the resident with broad clinical experience. The clinical experience must be scheduled principally in ambulatory care settings as described in paragraph (a)(10) of this section.

* * * * * *

[FR Doc. 89–28842–Filed 12–15–89; 8:45 am]

BILLING CODE 4160–15–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 503, 505 and 552

[Acquisition Circular AC–89–2]

General Services Administration Acquisition Regulation; Procurement Integrity

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Cancellation of temporary rule.

SUMMARY: General Services Administration Acquisition Regulation (GSAR) Acquisition Circular AC–89–2, which temporarily amended the GSAR to implement and supplement the Federal Acquisition Regulation (FAR) as amended by FAC 84–47 on Procurement Integrity, and which was published in the **Federal Register** on July 14, 1989, (54 FR 29720), is hereby cancelled. As a result of the enactment of section 507 of the Ethics Reform Act of 1989, the FAR has been amended by FAC 84–54 to suspend the effect on the FAR regulations implementing procurement integrity for a 1-year period beginning December 1, 1989, and ending November 30, 1990. Accordingly, the GSAR is amended to conform to the FAR as amended by FAR 84–54.

EFFECTIVE DATE: December 1, 1989.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy, (202) 566–1224.

List of Subjects in 48 CFR Part 503, 505, and 552

Government procurement.

1. The authority citation for 48 CFR Parts 503, 505 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Parts 503, 505 and 552 are amended by the following Acquisition Circular (Cancellation):

General Services Administration Acquisition Regulation Acquisition Circular AC–89–2 (Cancellation)

December 1, 1989.

To: All GSA contracting activities.

Subject: Implementation of Federal Acquisition Circular 84–54.

1. *Purpose.* This cancels General Services Administration Acquisition Regulation (GSAR) Acquisition Circular AC–89–2, dated July 10, 1989, on the subject of Procurement Integrity—OFPP Act Amendments of 1988.

2. *Background.* Acquisition Circular AC–89–2 was issued to temporarily amend the GSAR as necessary to conform to the Federal Acquisition Regulation (FAR), as amended by Federal Acquisition Circular 84–47, which implemented section 27 of the Office of Federal Procurement Policy Act dealing with procurement integrity. As a result of the enactment of section 507 of the Government Ethics Reform Act of 1989, the FAR has been amended by FAC 84–54 to suspend the effect of the FAR regulations implementing procurement integrity for a 1-year period beginning December 1, 1989, and ending November 30, 1990. Accordingly, Acquisition Circular AC–89–2 is being cancelled in order to amend the GSAR to conform to the FAR as amended by FAC 84–54.

3. *Effective date.* December 1, 1989.

4. *Supplementary instructions.*

a. Solicitations for the acquisition of leasehold interests in real property issued prior to December 1, 1989, for which offers have not been received, shall be amended, wherever practical, to delete the provisions at 552.203–71 and 552.203–8 and the clauses at 52.203–9 and 552.203–10.

b. For solicitations issued prior to December 1, 1989, for the acquisition of leasehold interests in real property where offers were received before December 1, 1989, but an award has not been made, the contracting officer shall disregard the lack of certification in determining eligibility for award and shall delete the provisions at GSAR 552.203–71 and 552.203–8 and the clauses at FAR 52.203–9 and GSAR 552.203–10 from the contract presented to the successful offeror for signature.

c. Contracts for supplies, services (including construction) and for the acquisition of leasehold interests in real property, which were awarded during the period that section 27 of the OFPP Act was in effect (July 16, 1989 to November 30, 1989) need not be modified to delete the FAR and/or GSAR provisions and clauses applicable to procurement integrity. However, contracting officers may wish to notify contractors that the clauses will have no force or effect for activities and conduct that occur during the 1-year suspension period.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89–29354 Filed 12–15–89; 8:45 am]

BILLING CODE 6820–61–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1090

[Ex Parte No. 230 (Sub 7)]

Improvement of TOFC/COFC Regulations (Pickup and Delivery)

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted regulations exempting the motor carrier pickup and delivery portion of trailer-on-flatcar (TOFC) and container-on-flatcar (COFC) services. The revised regulation at 49 CFR 1090.2 reflects our finding that, under 49 U.S.C. 10505, the motor carrier portion of such coordinated TOFC/COFC service, which by definition involves a prior or subsequent movement by rail carrier, is a matter related to rail carrier transportation, and that application of the Interstate Commerce Act is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a or to protect shippers from the abuse of market power. Under the revised rule, "Plan I" service (in which rail service is substituted for a portion of a motor

carrier's authorized service) is not being exempted as a class. The Commission will assess applications for individual Plan I exemptions on a case-by-case basis.

EFFECTIVE DATE: The revised rule is effective January 17, 1990.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 275-7691. (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: The revised regulation at 49 CFR part 1090.2 is set forth below. The regulation adopted here takes full account of public comments filed in response to the notice of proposed rulemaking (NPR) in this proceeding, 52 FR 41748 (October 30, 1987). In the NPR, we expressed the preliminary view that the logical scope of the class exemption should extend to all motor/rail COFC/TOFC services (save, perhaps, Plan I). We asked parties to respond to various specific questions designed to enhance our understanding of how the industry has evolved since 1980 and whether a further exemption would be consistent with the policies of the Interstate Commerce Act, as amended in 1980 with respect to both rail and motor carriers.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275-1721.)

Environmental and Energy Considerations

This action will not significantly affect the quality of the human environment or energy conservation. The exemption should have beneficial energy consumption and environmental impacts. To the extent that the exemption encourages the increased use of intermodal TOFC/COFC service in place of all-highway service, the net effect on the environment and on energy consumption should be favorable, because it is generally recognized that transportation by rail has a smaller environmental impact and uses less fuel than transportation by highway. Increased use of intermodal service also should reduce highway congestion and road damage.

Regulatory Flexibility Analysis

The Commission certifies that the revised rule will have a significant positive economic impact on a substantial number of small entities. It imposes no new regulatory burdens or requirements on any person, but instead relieves a potentially large number of persons, including small businesses, of such burdens and requirements. We have considered the purposes and anticipated effects of the exemption, as well as the alternatives (no exemption, partial exemption) open to us. We have chosen the feasible alternative that imposes the fewest, and removes the most, regulatory burdens on small businesses and other entities.

List of Subjects in 49 CFR Part 1090

Freight forwarders, Intermodal transportation, Maritime carriers, Motor carriers, Railroads.

Decided: November 27, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1090 of the Code of Federal Regulations is amended as follows:

PART 1090—PRACTICES OF CARRIERS INVOLVED IN THE INTERMODAL MOVEMENT OF CONTAINERIZED FREIGHT

1. The authority citation for part 1090 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, and 5 U.S.C. 553.

2. Section 1090.2 is revised to read as follows:

§ 1090.2 Exemption of rail and highway TOFC/COFC service.

Except as provided in 49 U.S.C. 10505 (e) and (g), 109229(1), and 10530, rail TOFC/COFC service and highway TOFC/COFC service provided by a rail carrier either itself or jointly with a motor carrier as part of a continuous intermodal freight movement is exempt from the requirements of 49 U.S.C. subtitle IV, regardless of the type, affiliation, or ownership of the carrier performing the highway portion of the service. Motor carrier TOFC/COFC pickup and delivery services arranged independently with the shipper or receiver (or its representative/agent) and performed immediately before or after a TOFC/COFC movement provided by a rail carrier are similarly exempt. Tariffs heretofore applicable to any transportation service exempted by this section shall no longer apply to such service. The exemption does not apply to a motor carrier service in which a rail carrier participates only as the motor carrier's agent (Plan I TOFC/COFC), nor does the exemption operate to relieve any carrier of any obligation it would otherwise have, absent the exemption, with respect to providing contractual terms for liability and claims.

[FR Doc. 89-29328 Filed 12-15-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 371

[Docket No. 60616-6116]

Fraser River Sockeye and Pink Salmon Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of 1989 inseason orders.

SUMMARY: The Secretary of Commerce (Secretary) hereby publishes the inseason orders regulating fisheries in United States waters that were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by the Secretary during the 1989 sockeye and pink salmon fisheries within the Fraser River Panel Area (Fraser River Panel (U.S.)). These orders established fishing times, areas, and types of gear for U.S. treaty Indian and all-citizen fisheries during the period the Commission exercised jurisdiction over these fisheries.

Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1989 orders are therefore being published in this notice to avoid fragmentation.

EFFECTIVE DATES: Each of the following inseason orders of the Secretary was effective upon announcement on telephone hotlines as specified at 50 CFR 371.21(b)(1) (at 51 FR 23420, June 27, 1986).

ADDRESS: Comments on these inseason orders may be sent to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206-526-6150.

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon (Treaty) was signed at Ottawa on January 28, 1985, and subsequently was given effect in the

United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631–3644.

Under authority of the Act, an emergency interim rule was promulgated at 50 CFR part 371 (51 FR 23420, June 27, 1986) to provide a framework for implementation of certain regulations of the Commission and inseason orders of the Commission's Panel for sockeye and pink salmon fisheries in the Fraser River Panel Area (U.S.). The emergency interim rule was effective from June 22, 1986, and remains in effect until modified, superseded, or rescinded. It applies to fisheries for sockeye and pink salmon in the Fraser River Panel Area (U.S.) during the period each year when the Commission exercises jurisdiction over these fisheries.

The emergency interim rule closes the Fraser River Panel Area (U.S.) to sockeye and pink salmon fishing unless opened by Panel regulations or by inseason orders of the Secretary that give effect to Panel orders, unless such orders are determined not to be consistent with domestic legal obligations. During the fishing season, the Secretary may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations. The Secretary issues inseason orders through his delegate, the Northwest Regional Director of NMFS. Official notice of these inseason actions of the Secretary is provided by two telephone hotlines described at 50 CFR 371.21 (b)(1). Inseason orders of the Secretary must be published in the **Federal Register** as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1989 orders are therefore being published in this notice to avoid fragmentation.

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by the Secretary during the 1989 fishing season. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220–22.

Order No. 1989–1: Issued 11:10 a.m. June 29, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets open 12 noon, June 29 to 12 noon, July 2.

Order No. 1989–2: Issued 2 p.m., June 30, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets closed at 12 noon, July 1. Areas 6, 7 and 7A—Net fishing open from 4 a.m. to 8 p.m., July 5.

All-Citizen Fishery: Areas 7 and 7A—Reef nets open 11:30 a.m. to 9:30 p.m., July 3. Gill nets open 5 a.m. to 12 noon, July 6. Purse seines open 2 p.m. to 9 p.m., July 6.

Order No. 1989–3: Issued 11:30 a.m., July 7, 1989. Referred only to Canadian area Panel Waters.

Order No. 1989–4: Issued 11:15 a.m., July 12, 1989.

All-Citizen Fishery: Areas 7 and 7A—Purse seines open 8 a.m. to 12 noon, July 13. Gill nets open 2 p.m. to 6 p.m., July 13. Reef nets open 11:30 a.m. to 5:30 p.m., July 14.

Order No. 1989–5: Issued 1:30 p.m., July 14, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets open 12 noon, July 16 to 11 p.m., July 18. Areas 6, 7 and 7A—Open to net fishing 7 a.m. to 11 p.m., July 18.

All-Citizen Fishery: Areas 7 and 7A—Reef nets open 11:30 a.m. to 9:30 p.m., July 17. Gill nets open 5 a.m. to 12 noon, July 19. Purse seines open 2 p.m. to 9 p.m., July 19.

Order No. 1989–6: Issued 11 a.m., July 17, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets open 12 noon, July 20 to 12 noon, July 23.

Order No. 1989–7: Issued 3:35 p.m., July 19, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets closed until further notice.

Order No. 1989–8: Issued 1:30 p.m., July 28, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets open 12 noon, July 30 to 12 noon, August 2. Areas 6, 7 and 7A—Open to net fishing 4 a.m. to 11 p.m., July 31.

All-Citizen Fishery: Areas 6, 7 and 7A—Purse seines open 6 a.m. to 6 p.m., August 1. Gill nets open 10 a.m. to 10 p.m., August 2. Reef nets open 11 a.m. to 9 p.m., August 3.

Order No. 1989–9: Issued 11:30 a.m., August 1, 1989.

All-Citizen Fishery: Area 4 and Area 3 north of 48°00'15" N.—Open for commercial trolling in waters westerly of the 100-fathom contour from 12:01 a.m., August 7 to 11:59 p.m., August 10.

Order No. 1989–10: Issued 2:10 p.m., August 4, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets open 12 noon, August 8 to 12 noon, August 9. Areas 6, 7 and 7A—Open to net fishing 5 a.m., August 8 to 9 a.m., August 9.

All-Citizen Fishery: Areas 6, 7 and 7A—Reef nets open 5 a.m. to 9:30 p.m., August 5. Purse seines open 5 a.m. to 9 p.m., August 6. Gill nets open 5 a.m. to 10 p.m., August 7.

Order No. 1989–11: Issued 11:25 a.m., August 8, 1989.

Treaty Indian Fishery: Areas 6, 7 and 7A—Opening extended for net fishing from 9 a.m., August 9 to 9 a.m., August 10.

Order No. 1989–12: Issued 4:25 p.m. August 11, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets open 5:30 a.m. to 2:30 p.m., August 16. Areas 6, 7 and 7A—Open to net fishing 5:30 a.m. to 2:30 p.m., August 16.

All-Citizen Fishery: Areas 6, 7 and 7A—Reef nets open 5 a.m. to 8 p.m., August 12, and 7 a.m. to 8 p.m., August 14. Purse seines open 11 a.m. to 8 p.m., August 15. Gill nets open 11 a.m. to 5 p.m., August 17.

Order No. 1989–13: Issued 1:45 p.m., August 14, 1989.

All-Citizen Fishery: Area 4 and Area 3 north of 48°00'15" N.—Open for commercial trolling in waters westerly of the 100-fathom contour from 12:01 a.m., August 16 to 11:59 p.m., August 19.

Order No. 1989–14: Issued 11:30 a.m. August 15, 1989. Referred only to fishing in Canadian area Panel Waters.

Order No. 1989–15: Issued 1:40 p.m., August 18, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets open 4 a.m. to 4 p.m., August 23. Areas 6, 7 and 7A—Open to net fishing 4 a.m. to 4 p.m., August 23.

All-Citizen Fishery: Areas 6, 7 and 7A—Gill nets open 11 a.m. to 7 p.m., August 24. Areas 4 and 3 north of 48°00'15" N.—Closed to commercial trolling at 11:59 p.m., August 18.

Order No. 1989–16: Issued 9:30 p.m., August 18, 1989. Referred only to fishing in Canadian area Panel Waters.

Order No. 1989–17: Issued 6 p.m., August 19, 1989. Referred only to fishing in Canadian area Panel Waters.

Order No. 1989–18: Issued 11:30 a.m., August 22, 1989. Referred only to fishing in Canadian area Panel Waters.

Order No. 1989–19: Issued 1:50 p.m., August 25, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets open from 4 a.m., August 27 to 10 a.m., August 28. Areas 6, 7 and 7A—Open to net fishing from 4 a.m., August 27 to 10 a.m., August 28.

Order No. 1989–20: Issued 11:30 a.m., August 29, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Open to drift gill nets from 12 noon, August 30 to 12 noon, September 2.

Order No. 1989–21: Issued 1:05 p.m., September 1, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets extended from 12 noon, September 2 to 12 noon, September 9. Areas 6, 7 and 7A—Open to net fishing from 6 p.m., September 3 to 9 p.m., September 5.

All-Citizen Fishery: Areas 6, 7 and 7A—Purse seines open from 5 a.m. to 9 p.m., September 6. Gill nets open from 6 p.m., September 6 to 9 a.m., September 7. Reef nets open from 5 a.m. to 9 p.m., September 8.

Order No. 1989–22: Issued 3:45 p.m., September 5, 1989. Referred only to fishing in Canadian area Panel Waters.

Order No. 1989–23: Issued 1:30 p.m., September 8, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets extended from 12 noon, September 9 to 12 noon, September 16. Areas 6, 7 and 7A—Open to net fishing from 5 a.m., September 11 to 9 a.m., September 12.

All-Citizen Fishery: Areas 6, 7 and 7A—Reef nets open from 5 a.m. to 9 p.m., September 10. Gill nets open from 6 p.m., September 12 to 9 a.m., September 13. Purse seines open from 5 a.m. to 9 p.m., September 13.

Treaty Indian and All-Citizen fisheries: Area 7A—Closed to net fishing northerly and westerly of a straight line drawn from Iwersen's Dock on Point Roberts to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Order No. 1989–24: Issued 3:45 p.m., September 11, 1989.

Treaty Indian Fishery: Areas 6, 7 and 7A—Extended for net fishing from 9 a.m. to 3 p.m., September 12.

All-Citizen Fishery: Areas 6, 7 and 7A—Reef nets open from 5 a.m. to 9 p.m., September 13. Gill nets open from 6 p.m., September 13 to 9 a.m., September 14. Purse seines open from 5 a.m. to 9 p.m., September 14. Area 7A—Closed to net fishing northerly and westerly of a straight line drawn from Iwersen's Dock on Point Roberts to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Order No. 1989–25: Issued 12 noon, September 13, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Closed to drift gill nets at 8 a.m., September 15.

Order No. 1989–26: Issued 12:15 p.m., September 15, 1989.

All-Citizen Fishery: Area 6—Regulatory control extended until further notice.

Order No. 1989–27: Issued 3:45 p.m., September 18, 1989.

All-Citizen Fishery: Areas 7 and 7A—Reef nets open from 5 a.m. to 9 p.m., September 19. Purse seines open from 5 a.m. to 9:0 p.m., September 20. Gill nets open from 6 p.m., September 20 to 9 a.m., September 21. Area 7A—Closed to net fishing northerly and westerly of a straight line drawn from Iwersen's Dock on Point Roberts to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Order No. 1989–28: Issued 3:50 p.m., September 21, 1989.

Treaty Indian and All-Citizen Fisheries: Areas 6, 7 and 7A—Regulatory control extended until further notice. Area 7A—Closed to net fishing northerly and westerly of a straight line drawn from Iwersen's Dock on Point Roberts to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Treaty Indian Fishery: Areas 6, 7 and 7A—Open to net fishing from 6 p.m., September 22 to 9 p.m., September 24.

All-Citizen Fishery: Reef nets open from 5 a.m. to 9 p.m., September 25. Gill nets open from 6 p.m., September 25 to 9 a.m., September 26. Purse seines open from 5 a.m. to 9 p.m., September 26.

Order No. 1989–29: Issued 2:35 p.m., September 26, 1989.

Treaty Indian and All-Citizen Fisheries: Areas 6, 7 and 7A—Relinquish regulatory control effective Sunday, October 1, except in those waters lying northerly and westerly of a straight line drawn from Iwersen's Dock on Point Roberts to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Order No. 1989–30: Issued 9:50 a.m., October 6, 1989.

Treaty Indian and All-Citizen Fisheries: Areas 6, 7 and 7A—Relinquish regulatory control effective Sunday, October 8.

Other Matters

This action is taken under authority of 50 CFR 371.21 (51 FR 23420, June 27, 1986) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 371

Fisheries, Fishing, Pacific Salmon Commission, Treaty Indians.

Authority: 16 U.S.C 3636(b).

Dated: December 11, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89–29337 Filed 12–15–89; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 54, No. 241
Monday, December 18, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. FV-89-066]

Irish Potatoes Grown in Idaho and Eastern Oregon; Withdrawal of Proposed Rule To Require Positive Lot Stamping on Containers of Lot-Inspected Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule to require positive lot stamping on containers of lot-inspected Idaho-Oregon potatoes. The proposal was initially recommended by the Idaho-Eastern Oregon Potato Committee (committee), to become effective for the 1989–90 season. Upon further review, the committee withdrew its recommendation due to difficulties it foresees in implementing the requirements at this time.

DATE: This withdrawal is effective December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, Telephone 202–447–2020.

SUPPLEMENTARY INFORMATION: This action withdraws a proposed rule issued under Marketing Agreement No. 98 and Marketing Order No. 945 (7 CFR part 945), both as amended, regulating the handling of Irish potatoes grown in certain counties in Idaho and Malheur County, Oregon. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

Fresh market shipments of potatoes grown in Idaho and Eastern Oregon are currently required to meet minimum quality and size standards, as well as pack specifications. They are also required to be inspected and certified as meeting those quality, size and pack standards by the Idaho or Oregon Federal-State Inspection Service.

On August 11, 1989, a proposed rule was issued to require that containers of lot-inspected potatoes be stamped with a Federal or Federal-State approved positive lot number. The proposal was published in the Federal Register on August 16, 1989 (54 FR 33707), and was based upon a unanimous recommendation by the Idaho-Eastern Oregon Potato Committee (committee), which is responsible for local administration of the marketing order program. Comments on the proposal were requested through September 5, 1989.

While no comments were received during the allotted comment period, the committee subsequently held a public meeting on November 9, 1989, to reconsider its recommendation. At that meeting it was determined that while the use of positive lot stamp procedures may have merit, some shippers would have difficulty implementing the new procedures at the current time. For example, shippers with smaller packing and storage facilities do not have adequate floor space to unstack the containers in each lot, have them stamped, and then restack them prior to shipment. The committee therefore unanimously rescinded its recommendation that all containers of lot-inspected potatoes be required to be stamped with a positive lot number.

Based upon the committee's November 9, 1989, recommendation and a further review of all available information, it is hereby determined that the record does not support establishing positive lot stamping requirements for containers of potatoes grown in Idaho-Eastern Oregon at this time. Therefore, the proposed amendment to the handling regulation published in the Federal Register on August 16, 1989 (54 FR 33707), is hereby withdrawn.

List of Subjects in 7 CFR Part 945

Idaho, Marketing agreements and orders, Oregon, Potatoes.

Dated: December 13, 1989.

William J. Doyle

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-29350 Filed 12-15-89; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Parts 1002 and 1004

[Docket No. AO-71-A77 and AO-160-A65; DA-88-105]

Milk in the New York-New Jersey and Middle Atlantic Marketing Areas; Partial Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision changes the New York-New Jersey Federal milk order with respect to the dates by which payments are to be made to producers, to cooperatives, and to and from the producer-settlement fund, and by which the market administrator is to announce the uniform prices to producers. Most of the dates will be 5 days earlier than specified in the current order provisions. The changes will allow for earlier payments to producers and will accommodate economic changes resulting from recent New York State legislation that will require, beginning January 1, 1990, that producers receive their final payment for milk each month on or before the 20th day of the following month. Proposals to provide for earlier and more frequent payments to producers and for a partial payment to the producer-settlement fund under the New York-New Jersey and Middle Atlantic Federal milk orders are denied. The decision is based on a public hearing held June 27–July 21, 1988, and November 14–16, 1988.

A referendum will be conducted to determine whether producers who supplied milk during April 1989 favor issuance of the amended order. It must be approved by at least two-thirds of the eligible voting producers to become effective.

Other issues considered at the hearing included proposed amendments to the New England Federal milk order, as well as other proposed changes to the New York-New Jersey and Middle Atlantic orders. All of the remaining issues not covered in this decision will be considered in a later decision. Only those proposals dealing with the timing and number of payments to producers, and related reporting and announcement requirements are considered in this partial decision.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding.

Notice of Hearing: Issued June 7, 1988; published June 10, 1988 (53 FR 21825).

Supplemental Notice of Hearing: Issued September 29, 1988; published October 4, 1988 (53 FR 38963).

Notice of Re-opened Hearing: Issued August 10, 1989; published August 16, 1989 (54 FR 33709).

Recommended Decision: Issued September 20, 1989; published September 26, 1989 (54 FR 39377).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the New England, New York-New Jersey and Middle Atlantic marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice (7 CFR part 900), at Syracuse, New York, on June 27-July 1, July 5-8, and July 18-21, 1988; at Manchester, New Hampshire, on July 11-14, 1988; and at Philadelphia, Pennsylvania, on November 14-16, 1988. A notice of hearing was issued June 7, 1988 (53 FR 21825), and a supplemental notice of hearing was issued September 29, 1988 (53 FR 38963). The hearing was re-opened solely for limited purposes on August 22, 1989 in Alexandria, Virginia, pursuant to a notice of hearing issued August 10, 1989 (54 FR 33709).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, Agricultural Marketing Service, on September 20, 1989, filed with the Hearing Clerk, United States Department of Agriculture, his partial recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. One paragraph is added at the end of Issue No. 7.

2. Twenty-three paragraphs are added at the end of Issue No. 8.

The material issues on the record of the hearing relate to:

Proposals To Amend All Three Orders

1. Classes of utilization.

Proposals To Amend Orders 1 and 2

2. Pooling standards.

a. Designated pool plants (Order 2).

b. Pool supply plants and bulk tank units.

c. Qualification of producer milk for pooling.

3. Seasonal payment plans.

4. Location pricing, zone pricing and transportation credits.

Proposals To Amend Order 1 Only

5. Producer-handler receipts of pool milk.

6. Charges on overdue accounts.

Proposals To Amend Order 2 Only

7. Partial payments to producers and to cooperatives, and the dates by which certain reports, announcements and payments should be made to accelerate payments to producers and accommodate economic conditions resulting from Pennsylvania and New York State law.

Proposals To amend Orders 2 and 4 Only

8. Partial payments to producers and to cooperatives, and the dates by which certain reports, announcements and payments should be made for the purpose of further accelerating payments to producers.

Proposal To amend Order 4 Only

9. Pricing producer milk at the location to which diverted.

This partial decision deals only with issues Nos. 7 and 8. The remaining issues of the hearing will be considered in a later decision on this record.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

7. *Partial payments to producers and cooperatives, and the dates by which certain reports, announcements and payments should be made to accelerate payments to producers and accommodate economic conditions resulting from Pennsylvania and New York State law.* The proposals concerning certain reports, announcements and payments under the New York-New Jersey order (Order 2), which were advanced by Dairylea Cooperative, Inc. (Dairylea), and Eastern Milk Producers Cooperative Association, Inc. (Eastern), should be adopted. Specifically, the order should be amended to require handlers to make partial payments by the last day of the month for the milk they receive during the first 15 days of the month from producers and cooperatives. The minimum rate for making such payments should be the lowest class price for the preceding month. Handlers regulated under Order 2 currently are not required by the order to make partial payments to producers.

The dates by which certain reports, announcements and payments are required to be made under Order 2 should be changed. In that regard, all reports required to be filed by handlers with the market administrator on or before the 10th day of the following month would have to be received at the office of the market administrator by that date to be considered as filed on time. At present, the order requires such reports to be postmarked on or before the 8th of the following month or be delivered physically to the market administrator's office no later than the 10th. The market's uniform price for the month would be computed and announced by the market administrator on or before the 14th day of the following month. Announcement of the uniform price is currently required on the 15th.

Final settlement with cooperatives for all of their milk deliveries in the previous month would be required of the buying handlers at the appropriate class prices on or before the 15th day of the month, instead of the 19th as currently required. The date by which handlers would be required to pay the amounts they owe to the producer-settlement fund would be changed from the 21st to the 16th day after the end of each month. By the end of the next business day (the 17th, rather than the 22nd day after the end of the month) the market administrator would be required to pay the amounts due to handlers from the producer-settlement fund. Final payments by handlers to producers for milk deliveries in the previous month

would be required by the 20th, instead of the currently required 25th. Authorized cooperatives would be permitted to collect from handlers payments due their producer-members two days earlier than payments are due to individual dairy farmers if the payments are made by check. However, if the handler pays the cooperative on a cash or cash equivalent basis, the payments to the cooperative may be made on the same date payments are due individual dairy farmers. Also, on or before the 20th day of each month, rather than the present date of the 25th, the market administrator would pay the amounts deducted from the computation of the uniform price for the preceding month to the qualified cooperatives and federations for their performance of specified services of marketwide benefit.

The witness representing Dairylea and Eastern testified that the purpose of the cooperatives' proposals was to bring the payment dates required under Order 2 into conformity with those required under both New York and Pennsylvania State laws. He explained that moving the date of final payment to producers from the 25th to the 20th of the month following the month in which the milk was received will also require changes in other payment dates and in reporting dates in order to make possible timely payments into and out of the producer-settlement fund. The witness stated that Order 2 should incorporate a partial payment to producers for milk received during the first half of the month, as the State programs currently require, and pointed out that the timing of payments required by Order 2 lags behind all other Federal order markets in nearly every category of payment.

The Dairylea/Eastern witness modified the cooperatives' proposal to require handlers' reports of receipts and utilization to be received by the market administrator no later than the 10th of the month, rather than continue to allow reports postmarked no later than the 8th to be considered as filed on time. He argued that a report mailed on the 8th will not necessarily be received on the 10th. The witness supported the proposed amendment that payroll reports be due on the 25th of the month, rather than on the last day of the month, for the preceding month's milk receipts by stating that the time allowed for filing the report after final payment to producers would not change. He also pointed out that most handlers file their payroll reports immediately after running producers' checks, and that the latest date for filing payroll reports under any other Federal order is the 25th, under the Middle Atlantic order.

The New York Farm Bureau (NYFB), a general farm organization that consists of 23,000 members, including 10,000 dairy farmers, proposed a package of payment proposals similar to those submitted by Dairylea/Eastern. The proponent NYFB witness stated that the proposals were designed to accomplish the goal of conforming with the payment requirements of New York State laws and providing earlier payments to dairy farmers covered under Order 2. The witness recognized the necessity of making earlier payments into and out of the producer-settlement fund in order to make earlier payments to producers.

The proposed amendments supported by the NYFB witness agreed with the Dairylea/Eastern proposals on all but three payment dates. The NYFB proposed that the due dates for payments to and from the producer-settlement fund be advanced by three days, instead of the 5 days proposed by Dairylea/Eastern. Payments to cooperatives at class prices would have been advanced by only one day under the NYFB proposal, instead of by 4 days, as proposed by the two cooperatives. Also, the proposed amendments supported by the NYFB witness did not include any change in the date by which the market administrator should make payments to qualified cooperatives. No testimony was presented by the NYFB witness to explain the differences between its proposed payment dates and those advanced by Dairylea/Eastern.

A witness representing Farmland Dairies, Inc. (Farmland), opposed the Dairylea/Eastern proposal to move the due date for filing payroll reports ahead by 5 days. The witness testified that this change would have an adverse impact on small businesses such as Farmland because it is difficult to meet the present Order 2 deadline for filing such reports. A brief filed on behalf of Farmland stated that the Dairylea/Eastern proposals regarding the due dates of payments to cooperatives, and to and from the producer-settlement fund impose earlier payment deadlines than are required by New York and Pennsylvania law. The brief argued that the NYFB proposals more accurately reflect the changes required by those laws. The Farmland brief also described the proposed change of date for payments from the producer-settlement fund to qualified cooperatives for marketwide services from the 25th to the 20th as self-serving on the part of the cooperatives, and urged the Secretary to reject the proposed amendment.

The National Farmers Organization (NFO) proposed an accelerated plan for paying producers, which would require two partial payments to producers and cooperatives in addition to partial payments to the producer-settlement fund. In connection with such proposals, NFO also proposed a complete schedule of due dates to implement its payment plan. At the hearing, NFO took the position that they did not oppose the proposals by the cooperatives and the NYFB but preferred their own proposed payment plan. The NFO proposals concerning payments and due dates are dealt with as a separate issue later in this partial decision.

There was no testimony from any hearing participant denying the need to align the Order 2 payment provisions with the terms of payment under State laws. The amendments adopted herein, which provide for partial payments and move the payment dates forward by several days, will accomplish the goals intended by the NYFB's proposals. They also will meet some of the objectives of NFO.

There is an urgent need to deal with the payment issues. If Order 2 is not amended by January 1, 1990, final payments to New York dairy farmers will be required by New York law on or before the 20th day of each month, while the Federal order provisions would not provide for payments to handlers from the producer-settlement fund until the 22nd of the month. Consequently, manufacturing handlers and cooperatives would have to borrow money or use internal funds to pay their producers in accordance with New York State law before those handlers could receive the amounts due them for that purpose from the producer-settlement fund. The adverse economic consequences resulting from the diffrence between the Order 2 payment terms and the payment requirements under the laws of New York State can be avoided if the amendments adopted herein are made effective by January 1, 1990. The January 1990 deadline cannot be met if the decision on this issue is delayed until all issues involved in this proceeding are decided. This partial decision on the payment proposals should allow sufficient time to amend Order 2 by January 1 when the new New York State payment requirements become effective.

State legislative actions have already altered the payment practices of Order 2 handlers who are buying milk from producers and cooperatives. In 1981, in an attempt to standardize industry payment practices for producers and reduce their exposure to possible

financial losses, the New York State legislature enacted a law mandating partial payments by milk dealers to New York producers for their milk deliveries in the first 15 days of each month. The New York State legislature took further action in 1987 to reduce the financial exposure of dairy farmers by accelerating payments to producers in two phases. From the law's effective date through December 31, 1989, New York dairy farmers must be paid a partial payment by the 5th day of the following month for their milk deliveries in the first 15 days of the month at the Federal order Class II price for the preceding month. Final payments are due such producers by the 23rd day of the following month. Handlers regulated under Order 2 have been able to pay their producers within the present New York State payment schedule because payments to handlers from the Order 2 producer-settlement fund are made on or before the 22nd. In January 1990, however, the New York law will require partial payments to be made to producers for their first 15 days' production no later than the last day of the month in which the milk is received. The law will require final payments to producers to be made on or before the 20th. As a result, it will be necessary for the Federal order to require payments from the producer-settlement fund to be made earlier than currently required so that handlers will be able to meet the State payment schedule.

In 1983, the Commonwealth of Pennsylvania enacted payment regulations for milk produced by Pennsylvania dairy farmers that are more stringent than the New York State payment requirements. Under the Pennsylvania regulations, partial payments by milk dealers are required by the last day of the month for the milk they buy from Pennsylvania dairy framers during the first 15 days of the month, at a rate which at least equals the Class II price for the preceding month. Final payments to such dairy farmers must be made by the 18th day of the next month.

The record shows that approximately 70 percent of the milk pooled under Order 2 is produced on farms in New York, with approximately another one-quarter of the market's milk produced in Pennsylvania. Producers located in these two states, then, are responsible for over 90 percent of the milk pooled under Order 2 and have for some time been receiving two payments per month, with final payments made earlier than Order 2 currently requires. It is therefore appropriate, and likely to require only minimal changes in handlers' payment practices, to include provisions in Order 2 that reflect such ongoing payment practices by handlers. By so doing, the minimum payment terms will be extended throughout the marketplace and apply to all producers and handlers covered by Order 2.

The various due dates specified by Order 2 for reports, announcements and payments must be established in a particular sequence, and within a time frame limited by the market administrator's receipt of handlers' reports of receipts and utilization and final payments to producers. Each specified due date is contingent upon the timely completion of a prior activity. The time allowed for the performance of the required reports, announcements and payments must be structured to afford handlers a reasonable opportunity to comply with the regulations. It is necessary that the due dates for payments prescribed in the order allow adequate time for the money to be transferred between the different persons involved. Otherwise, handlers could be placed in the position of being unable to comply with the terms of the order simply because it is impossible to meet the established due dates. Since some of the payment steps that must occur between the payments mandated by the State laws are not addressed by the NYFB proposals, the schedule of due dates proposed by Dairylea/Eastern should provide Order 2 handlers a reasonable opportunity to comply with the amended order.

The 5-day advancement (from the 25th to the 20th) in the due date for final payments by handlers to producers under Order 2 will merely reflect the minimum payment requirements that all handlers will be meeting under the laws of New York State.

Partial and final payments by handlers to cooperatives collecting the money due their individual member producers should be payable two days prior to the date by which payments to individual producers must be made if paid by check. Proponent cooperatives proposed that such payments be made two days earlier than those to individual producers. The NYFB proposed that such payments to cooperatives be required on the same date payments are due to individual producers, as the current order provides. Under the New York law that becomes effective on January 1, 1990, dealers buying milk from cooperatives must transmit payment by any method whereby the cooperatives receive the cash or cash equivalent no later than the date the payment is due or receive a check at least two days prior to that date. Under such payment terms, handlers are permitted to choose their method of payment (wire transfer or check), but they must make the money available to the cooperatives by the due date. If a handler pays by bank transfer, the funds are available to the cooeprative immediately. However, if a handler pays by check, it takes at least two days after the check is received by the cooperative for the check to clear the banking system and for the funds to become available for use by the cooperative.

In cases where cooperatives are collecting partial and final payments due their member producers, handlers paying by check should be required to make such payments to cooperatives at least two days prior to the date on which payments are due individual producers. However, if the payments are made in cash or cash equivalent (presumably by wire transfers of money), the handler payments would be due on the same date the payments are due to individual dairy farmers. This change will merely reflect the payment practices that will be in effect with regard to most of the Order 2 milk as a result of the New York State law, while allowing handlers a choice in the manner of payments made to cooperatives for their members' milk. If handlers choose to make their payments to cooperatives by electronic transfers of funds, they should be able to have use of the funds until the date of the bank transfer. For the same reasons, this two-day provision will also apply to the partial payment by handlers to cooperative associations for milk purchased on the basis of class prices.

The due dates for various other payments under the order must be based on the date for announcing the uniform price that is payable to producers. It is only after the uniform price has been announced by the market administrator that the amounts of payments due to and payable from the producer-settlement fund can be determined and final payments can be made to producers and cooperatives.

As proposed by Dairylea and Eastern, the deadline for announcing the uniform price each month should be moved forward one day to the 14th. The order now provides that the uniform price must be announced by the market administrator on or before the 15th day of each month. The last time the Order 2 uniform price was announced as late as the 15th day of the month was in January 1973. In about one-half of the months since that time, the uniform price has been announced on the 14th. In the other half of the months involved, the price was announced on the 12th

and 13th, with one announced as early as the 11th. This change should, then, present no difficulty.

If the uniform price is to be announced by the 14th of the month, it is reasonable to expect handlers to pay their producer-settlement fund obligations no later than the 16th. Under other Federal milk orders, the average period of time between the announcement of uniform prices and payments by handlers to the producer-settlement fund is 2.15 days.

Payments to handlers by the market administrator from the producer-settlement fund should be required on or before the 17th day of the month. This payment schedule will give handlers an opportunity to receive their money from the producer-settlement fund and, in turn, make final payments to New York producers by the 20th day of the month, and to Pennsylvania producers on the 18th. The dates for payments to and from the producer-settlement fund as advocated by NYFB and Farmland would not allow for handlers to receive their producer-settlement fund payment before being required to pay their Pennsylvania producers. Since only 25 percent of the Order 2 milk is from Pennsylvania producers, the adverse economic consequences are not as large as in the case of the New York producers. Nevertheless, the proposal adopted herein is more equitable and advantageous since it avoids this economic dislocation with regard to payments to producers in both States. In addition, for handlers of New York producers' milk, this payment schedule will allow 2 days for a weekend between the 14th and the 20th.

Final payments by handlers to cooperative associations for milk purchased on the basis of class prices should be made no later than the 15th day of the month. Such payments cannot be delayed beyond that date because cooperatives that are accountable to the pool for the milk of their member producers should be paid for the milk they sell to processing plants before the cooperatives' payments are due to the producer-settlement fund. Otherwise, the cooperatives would have to borrow money or use internal funds to make their equalization payments into the marketwide pool. Thus, the later dates advocated by NYFB and Farmland for such payments to cooperatives would create unnecessary and adverse economic consequences.

The amounts deducted from the computation of the uniform price each month to effectuate the payments to cooperatives for marketwide services would be paid by the market administrator to the qualifying organizations on or before the 20th day of each month. Moving the due dates of payments for marketwide services forward 5 days complements the 5-day advancement in the due date of final payments to producers. Although NYFB proposed a later date, and Farmland supported the NYFB proposal, failure to change the date for this payment would not benefit any other handlers. Also, after all of the other payments required to be made from the producer-settlement fund have been disbursed, there is no reason for the market administrator to delay making this payment to qualified cooperatives.

This decision decreases the amount of time currently allowed by Order 2 between the announcement of the uniform price and the due date for final payments to producers. To meet these earlier payment deadlines, the latest available technolgies in moving money from one account to another (electronic bank transfers) most likely will have to be relied upon by some handlers and by the market administrator.

In addition to advancing certain payment and announcement dates under Order 2, the dates by which certain reports must be filed should be modified. As proposed by Dairylea/Eastern, handler reports of milk receipts and utilization for the month would continue to be required to be received by the market administrator on or before the 10th day of the next month. The postmark deadline of the 8th, which the current order provides as an option to personal delivery by the 10th, should be eliminated because mailing a report on the 8th will not assure that the report would be received by the 10th.

In addition to the reports of milk receipts and use, handlers are required to file with the market administrator certain other supplementary information by the 10th of the following month concerning producer additions and withdrawals, changes in farm operators and the establishment of bulk tank units. The additional information is needed by the market administrator to verify the correctness of the information on the handler's report of receipts and utilization. To aid in the market administrator's verification of the handler's reported information, the supplementary reports also should be received by the 10th.

Although the proposal by the cooperatives to require handlers to file producer payroll reports by the 25th day of the following month, or 5 days earlier than at present, was included with their proposals to accelerate payment dates, that issue should be considered in a later decision. The primary effect of the proposed change in the payroll reporting date would be to facilitate the computation of producer bases if the base plan proposal is adopted. Thus, the change is not needed to accommodate the other changes herein relating to payment dates, and could impose a slightly heavier reporting burden on handlers.

Using a receipt rather than a postmark basis for some reporting deadlines may require handlers and the market administrator to use new methods of data transmission. Data are commonly transferred between distant locations on a regular basis in the business world today by such means as computer terminals and overnight mail service. With widespread availability of such methods, handlers who are running close to a reporting deadline may have several options from which to choose in communicating the required information to the market administrator on a timely basis, and in a manner prescribed by the market administrator.

The primary objective of the payment schedule under any order is to get the money owed dairy farmers for their milk to them as quickly as possible. It is evident from the foregoing that the amendments proposed by Dairylea/Eastern and adopted in this decision will accomplish that objective, and were carefully designed to ameliorate any adverse economic consequences to Order 2 handlers in complying with payment obligations imposed by State law.

Comments filed by Dairylea and Eastern Milk Producers in response to the recommended decision supported the decision and urged its immediate adoption and implementation.

8. *Partial payments to producers and to cooperatives, and the dates by which certain reports, announcements and payments should be made for the purpose of further accelerating payments to producers.* The accelerated payment plans proposed by the National Farmers Orgainzation (NFO) for the New York-New Jersey order (Order 2) and the Middle Atlantic order (Order 4) should not be adopted.

NFO is a national cooperative association representing about 320 Order 2 dairy farmers who supply approximately 18 million pounds of milk per month for the Order 2 market. The cooperative association also represents about 30 producers who supply approximately 3.5 million pounds of milk per month for the Order 4 market. Three other cooperatives (Middlebury Center, Cedarville Milk Producers and Lowville Milk Producers) supported NFO's accelerated payment plan. These three cooperatives supply about 26

million pounds of milk per month for the Order 2 market.

The NFO proposals to amend Orders 2 and 4 would require handlers to make two partial payments for the milk they buy from cooperative associations and individual dairy farmers. Also, they would require partial payments to the producer-settlement fund. In connection with the implementation of its payment plans for Orders 2 and 4, NFO also proposed a complete schedule of due dates by which certain reports, announcements and payments must be made.

NFO modified its proposals at the hearing to provide for paying producers and cooperatives three times per month at 10-day intervals. Specifically, on or before the 25th day of the month Order 2 and 4 handlers who purchase milk from cooperatives would be required to pay the associations not less than 105 percent of the prior month's lowest class price for milk they received from such cooperatives during the first 15 days of the month. On or before the 5th day of the following months, handlers would be required to pay cooperatives at the same rate for milk they received from such associations during the 16th through 25th days of the month. Final settlement at the uniform prices for all milk deliveries by cooperatives in the previous month would be required of handlers by the 15th day of the following month. Handlers who buy milk from cooperatives on the basis of class prices would be required to pay the cooperatives 2 days earlier, by the 13th. Handlers would be required to pay for milk purchased from individual dairy farmers by the 27th, 7th and the 17th. The terms (rate of payment and deliveries covered) for making partial and final payments to individual producers would be identical with those provided in paying cooperatives under both orders.

The NFO proposals also would provide that Order 2 and 4 handlers who had pool obligations for the previous month be required to make partial payments of 50 percent of their previous month's pool obligation into the producer-settlement fund on the first day of the next month. In connection with its proposals that producers and cooperatives supplying milk for Orders 2 and 4 be paid three times each month, NFO modified its proposals included in the hearing notice to require earlier due dates for certan reports, payments and announcements. In that regard, the reports of milk receipts and utilization and any supplemental information that must be filed with those reports would be required to be received by the market administrator by the 8th of the following month so that the uniform price can be computed and announced by the market administrator on or before the 12th. Handlers would be required to pay the money they owe to the producer-settlement fund by the 13th and the market administrator would in turn pay the money due handlers from such fund on the 14th.

An NFO witness contended that the present payment terms under Orders 2 and 4 are inequitable because they result in unnecessary financial exposure and unjustified shifting of capital requirements from handlers to producers. The witness testified that NFO's member dairy farmers lost substantial amounts of money in the financial defaults of two major dairy industry organizations (NEDCO and Knudsen-Foremost). Because of these losses, the witness stated, NFO decided to study the industry's credit structure to determine whether certain changes in practices and procedures could be implemented to lessen or avoid such losses in the future.

The NFO witness testified that an analysis of its bad debt losses nationally showed that NFO's dairy losses averaged 20–40 times more than its meat animal losses and 5–10 times more than its losses from grain sales. He stated that the cooperative concluded that the greater dairy losses were a result of payment delays on milk sales, which were considerably longer than those in connection with its meat or grain sales. The witness testified that the proposed amendments are intended to reduce the financial risks of dairy farmers and increase their cash flow.

In support of the accelerated payment plan, a witness for NFO testified that handlers are not required to pay producers for milk until a date well after the dairy farmer has delivered the product. Proponent contended that a delay in payments by handlers for milk they have received materially increases the financial risks facing dairy farmers. He claimed that these payment delays increase capital requirements for dairy farmers who in effect are financing the operations of milk processors. Also, he said, in the event the processor's operation fails, dairy farmers as unsecured creditors suffer significant financial losses.

To demonstrate the problems with the current delay in payments, an NFO witness presented an exhibit showing the amount of time between delivery of a producer's milk and payment to the farmer for the milk. The data estimate the maximum and average financial exposure of dairy farmers under various existing and proposed payment plans. They also compare the variation in payment lag. For example, under the provisions of Order 2, which currently requires only a single payment to producers by the 25th of each month for milk delivered in the previous month, there is a maximum payment lag of 56 days and an average lag of 41 days. Order 4 requires partial payments to dairy farmers for their milk deliveries during the first 15 days of the month on the last day of the month and a final payment for all deliveries in the prior month by the 20th day of the following month. The Order 4 payment schedule results in a maximum lag of 37 days and an average lag of 26.9 days.

To further illustrate the potential cost of delays in payments to producers, the NFO witness estimated the maximum financial exposure of producers at $212 million and $82 million per month under Orders 2 and 4, respectively. These figures represent the maximum potential monetary losses by dairy farmers in the event of financial failure of handlers. Proponent indicated that these figures are not particularly important because it is unlikely that all handlers would fail at the same time. However, he stated, the numbers are noteworthy because they indicate the substantial amounts of money that producers are advancing to handlers each month.

Proponent witness claimed that the maximum and average exposure of an individual producer are highly relevant in terms of the amount of credit a dairy farmer is extending and thus the financial risk involved for each such person. Because of the differences in payment lags under the two orders, the witness said, the maximum financial exposure of an average producer was $14,371 under Order 2 and $12,761 under Order 4. He also stated that the average financial exposure per dairy farmer reflects the amount of additional capital required per farm because of the delayed payment system. He estimated that the average exposure per producer is $10,522 under Order 2, and $9,277 under Order 4.

A witness for NFO also contended that because of higher milk prices and costs of capital, dairy farmers have been facing ever-increasing costs and risks because of the time lag in milk payments. He claimed that such costs and risks have increased over the years due to the decline in the number of plants and producers. The witness testified that with fewer plants, the volume per plant has increased and the monetary consequences to producers resulting from a single plant's failure

have increased also. Similarly, he stated, as the number of producers supplying the Order 2 and Order 4 markets has declined over the years, the exposure per producer has increased. Proponent claimed that as these trends continue in the future, payment delay will become more of a problem for dairy farmers.

According to an NFO witness, NFO changed its payment schedule for its dairy farmer members in the Minnesota-Wisconsin area from twice each month to three times per month in January 1987. He stated that at the same time NFO started paying its producers three times each month, the cooperative association initiated a program of billing its customers and collecting the money from its sales of milk on an accelerated basis so that the cooperative would have the money to pay its member-producers. Processors buying milk from NFO were permitted to choose a three-payment or a two-payment per month system. According to the witness, the purpose of both payment systems was to accelerate the flow of money from processors who use the milk to dairy farmers who produce and deliver the milk to dealers for processing.

The NFO witness testified that NFO introduced its accelerated payment program in the States of New York, New Jersey and Pennsylvania in October 1987. Milk produced by NFO member-producers in these states is regulated under either Order 2 or Order 4. The witness stated that under the association's payment program for the Northeast, producers receive a partial payment for their deliveries in the first 10 days of the month by the 25th day of the month and receive an additional partial payment for shipments during the next 10 days by the 5th day of the following month. Final payment to producers is made not later than the 18th day of the month for all milk delivered in the previous month. According to the witness, NFO expanded its accelerated payment program to cover producers delivering milk under the New England order (Order 1) in January 1988. Since that time, he said, all of NFO's producers have been covered by some type of accelerated billing, collection and payment program.

The NFO representative stated that several other Order 2 handlers currently pay some producers more than twice a month. He testified, however, that these handlers do not follow the same payment patterns as those adopted by NFO. Altogether, the witness estimated that less than 5 percent of the more than 21,000 producers whose milk is pooled under Orders 2 and 4 are currently being paid more frequently than twice per month.

Testimony was received from 19 individual dairy farmers in support of NFO's payment proposal. The producers stated that more frequent payments allow them to take advantage of discounts offered by their suppliers and to make loan payments earlier, thereby reducing their interest costs. The dairy farmers also supported the payment plan because of the assurance they felt it offered of payment for their milk deliveries in the event of handler failure. In addition, 56 dairy farmers submitted nearly identical letters supporting the proposals on the basis that dairy farmers do not receive the same credit terms that they are required to extent to the buyers of their milk.

A witness for a national association of milk processors and witnesses for associations of New York State and Pennsylvania milk processors testified in opposition to NFO's payment proposal. In addition, testimony from several individual handlers, including one cooperative association, was received opposing the proposal. Briefs filed on behalf of five other proprietary handlers, another cooperative association, and another national association of regulated handlers also opposed adoption of the NFO proposal.

Opponents of the proposal argued that adoption of the proposal to require that dairy farmers whose milk is pooled under Orders 2 and 4 be paid earlier and more frequently is unnecessary for the security of those producers. The witness representing New York State Dairy Foods, Inc., a trade association of milk handlers, stated that the New York State Milk Control and Milk Producers Security Fund Act of 1987 protects producers for 43 days' milk, while the maximum exposure of dairy farmers under New York State's current payment requirements is 39 days. He noted that dealers must post bonds for 43 days' milk or participate in the Milk Producers' Security Fund by paying 1.5 cents per hundredweight of the milk they handle in addition to posting a bond for 13 days' milk. According to the witness, the balance in the fund is over $3.8 million, and the law provides for a loan from the State if a default exceeding the amount of the fund were to occur. The witness observed that over 71 percent of the milk pooled under Order 2 is produced in New York State, and that the dairy farmers who produce that milk are fully protected from handler defaults by the New York State law. He also stated that under the State law, producers are already receiving partial payments which are not required under Order 2, and earlier final payments.

A representative of the Association of Pennsylvania Milk Dealers stated that the association's members buy about 50 percent of the milk produced in Pennsylvania, and sell about 90 percent of the fluid milk sold in the State. He testified that 63 percent of the producer milk pooled under Order 4 is produced in Pennsylvania. The witness explained that under Pennsylvania's Milk Producer Security Act, handlers may choose to post a bond that covers 30 days of the handler's milk receipts, or post a bond ensuring payment for 12 days' receipts and pay 2 cents per hundredweight of milk handled by the security fund. He stated that over 98 percent of the Order 4 milk produced in Pennsylvania is covered by the 30-day bond provision. In addition, the witness stated, Order 2 handlers buying milk produced in Pennsylvania must post bonds to ensure payment for that milk.

A spokesman for the Milk Industry Foundation (MIF) and the International Ice Cream Association testified against NFO's payment proposals on the basis of the financial and administrative burden such a plan would place on those organizations' members who are regulated under Orders 2 and 4. The witness stated that the organizations' members operate 750 processing plants accounting for 80 percent of the fluid milk products distributed on routes in the United States and 85 percent of the U.S. frozen dessert industry. The MIF representative stated that adoption of the NFO proposals would create a significant cash flow strain and financial burden for handlers that would be borne eventually by consumers. He explained that handlers' accounts receivable generally run 24–40 days on most commercial accounts, with schools and state institutions usually on a longer, 60–90-day payment schedule. As a consequence, the witness said, handlers would have to pay producers before the handlers receive payment.

The MIF spokesman estimated the cost of the proposed payment schedule to Order 2 handlers as an additional $321,000 in April 1988, or an increase of 3.3 cents per hundredweight in the cost of raw milk. He stated that adoption of the proposals would require a 15-million-pound-per-month Order 2 handler to pay out $823,500 eight days earlier than at present to meet the proposed first partial payment date, and $550,000 16 days earlier to meet the proposed second partial payment date. Further, he said, the proposal to require partial payments to the producer-

settlement fund would cause Order 2 handlers to pay $1.8 million 20 days earlier each month, while Order 4 handlers would have to pay $1.7 million 14 days earlier. The MIF witness projected that these increases would result in added costs of $3.7 million per year to New York-New Jersey consumers, and $1.7 million to Order 4 consumers.

The MIF witness estimated that the additional cost of issuing 3 checks each month to producers could amount to as much as 1 cent per hundredweight. However, he noted, cooperatives could not be required to pay their dairy farmer members with any more frequency than they do at present. As a result, he stated, cooperative associations with processing and manufacturing operations would gain a significant advantage over proprietary processors. The witness also pointed out that handlers in unregulated area and those regulated under other marketing orders would not be required to pay producers three times per month, and thereby would have a competitive advantage. Manufacturing handlers, he maintained, would be competitively disadvantaged nationally, since most orders require only two payments per month.

The MIF spokesman testified that while handlers generally are able to obtain credit less expensively than producers, the extent of the added cost burden to handlers under NFO's accelerated payment proposal would be more than the gain to producers. He expressed the opinion that the "cost of money" to producers as a result of having to wait for payment for their milk is reflected in the Minnesota-Wisconsin price series which reflects prices paid to producers of unregulated Grade B milk in the upper midwest and which, over time, reflects the cost of producing milk.

While most of the individual handlers who testified or submitted briefs agreed that adoption of more frequent and earlier payments to producers would cause them severe cash-flow problems, a number of them also argued that the NFO proposals would increase their administrative costs of issuing checks to producers by at least 50 percent. An NFO witness had testified that the cost of issuing each extra check is approximately 70 cents.

The operators of two proprietary pool plants regulated under Order 2 testified that handlers currently have the option of paying producers more frequently than twice per month but may choose, instead, to offer premium payments to producers. Both handlers stated that more frequent payments to producers should remain an option to be negotiated between a handler and the producers or cooperative associations from which the handler obtains milk. One of the handlers expressed his opinion that producers currently are compensated for extending credit to handlers by receiving over-order prices for their milk.

Another handler argued that the partial payment rate of 105 percent of the previous month's lowest class price would be too high in some months, and may result in overpaying producers who quit in the middle of the month. Another problem he foresaw would be having to issue a final check containing negative adjustments for portions of the month. The handler pointed out that in every month of 1987, 105 percent of the previous month's Minnesota-Wisconsin price represented over 90 percent of the order's blend price, and exceeded the blend price in May and June. He explained that the high percentage of Class II use in Order 2 results in a blend price that is likely to be exceeded by 105 percent of the previous month's lowest class price.

Representatives of two cooperative associations agrued that the NFO proposal would disrupt marketing conditions in the overlapping milkshed between Orders 1 and 2, and would not allow enough time for handlers to file reports of receipts and utilization, or for the different payments to be made to cooperative associations, into and out of the producer-settlement fund, and by handlers to producers. The cooperatives pointed out that their members are protected from some of the risks of handler defaults by a sharing of risk, management's monitoring of handlers' financial condition, and the practice of discontinuing deliveries of milk to poor-risk handlers, or insisting on payment on delivery. Consequently, they stated, their memberships do not support the NFO proposal. One cooperative witness objected that the requirement that handlers having obligations to the producer-settlement fund in the previous month pay a partial payment to the fund on the first day of the next month discriminates against handlers with a percentage of Class I use above the average for the marketwide pool. The cooperative spokesman explained that the cooperative pays into the pool for some months, and draws money out in others. With such a requirement, he stated, the cooperative may have to pay into the fund on the basis of the prior month's obligation, and then wait two weeks to get its money back if the cooperative were drawing money out of the pool during the current month. As a result, the spokesman said, the cooperative would lose the use of its members' money and interest during that period.

NFO's proposals to accelerate producer payments to three times per month on earlier dates should not be adopted. There is little testimony or evidence in the record of this proceeding to indicate that the concerns expressed by NFO to support adoption of its accelerated payment proposals have any substantive basis. Also, the record indicates very little producer support for the proposed amendments, with a broad base of handler opposition to their adoption.

One of the major concerns addressed by NFO was the producer payment lag and resulting financial exposure of dairy farmers, particularly under Order 2, which does not provide for partial payments to producers. However, NFO's use of payment dates required by Order 2 to contrast the current payment lags to producers with those resulting from NFO's proposals distorts the actual payment situation of producers by ignoring the payment requirements legislated by the States of New York and Pennsylvania. These State laws were enacted for the same reasons given by NFO to support adoption of three payments per month to producers, namely to improve dairy farmers' cash flow and reduce their exposure to risk of financial losses. Although the milkshed for the Order 2 market covers a 7-state area, over 97 percent of the market's total milk production is produced on farms in New York and Pennsylvania.

While Order 2 currently requires only a single payment by handlers to dairy farmers on the 25th day after the end of each month, the States of New York and Pennsylvania have adopted legislation which provides for earlier and more frequent payments to producers and establishes security funds to ensure that handlers' financial failures will not result in nonpayment to dairy farmers.

Since 1978, there have been seven bankruptcies by handlers regulated under Order 2. The most recent and certainly the most significant in terms of the amount of money involved would be the bankruptcy of the Northeast Dairy Cooperative Federation, Inc. (NEDCO), which occurred in 1985. The record shows that NEDCO owed about $1 million to the producer-settlement fund and $21 million to dairy farmers at the time it filed for bankruptcy protection from its creditors. Although some of the money was later recovered, dairy farmer losses were substantial. The adverse financial impact of NEDCO and other handler bankruptcies on dairy farmers prompted New York State legislators to advance the payment dates for New

York producers in order to limit the exposure of the Producer Security Fund and see that dairy farmers receive their money on a more timely basis.

In 1987, New York State took action to reduce the financial exposure of dairy farmers and improve their cash-flow position by accelerating payments to dairy farmers in two phases. Under the 1987 law, the dates of payments to dairy farmers were moved forward to reduce the payment lag and financial exposure of such persons. From that law's effective date on November 27, 1987, until December 31, 1989, New York dairy farmers must be paid a partial payment by the 5th day of the following month for their deliveries in the first 15 days of the prior month. Final payments to such producers must be made by the 23rd day of the next month. After January 1, 1990, New York producers must be paid by the last day of the month for their deliveries during the first 15 days of the month with final payments due by the 20th day of the following month.

In addition to mandating partial payments and advancing the payment dates for New York dairy farmers, the New York legislature imposed further requirements on milk dealers to enhance the payment security for New York dairy farmers in cases of payment default. Under the Milk Control and Milk Producer Security Fund Act of 1987, milk dealers are required to post a bond covering 43 days of their milk receipts from dairy farmers or participate in the Milk Producer Security Fund. Dealers who choose to pay into the security fund are assessed 1.5 cents per hundredweight on all milk purchased from dairy farmers each month and also must post a bond for 13 days' worth of milk receipts. Therefore, under either arrangement, a handler buying milk from New York dairy farmers is required to provide a bonding contract with an insurance company or bank guaranteeing payment for producers' milk receipts. Any losses not covered by bonding or the security fund may be paid off through a loan from the State to the security fund, as provided for by the law.

The record also indicates that the States of New Jersey, Massachusetts and Vermont also provide security programs to protect dairy farmers if the persons buying their milk are unable to pay them.

The Pennsylvania State Legislature enacted earlier final payment dates for Pennsylvania dairy farmers after a major dairy bankruptcy in 1983. Under Pennsylvania law, final payments to Pennsylvania producers are due by the 18th day of the following month (2 days earlier than under New York law). The Pennsylvania Legislature also enacted a law entitled the "Mills Producers Security Act." The law requires that dairy farmers and cooperatives receive prompt payments from milk dealers and handlers. It also is intended to protect dairy farmers against losses resulting from nonpayment for milk because of defaults by purchasers. Under the Pennsylvania law, a milk dealer has the option of posting a bond for an amount which covers 30 days of milk receipts, or posting a bond covering 12 days' worth of milk and paying 2 cents per hundredweight into the security fund each month. If an Order 2 milk dealer buys milk produced in Pennsylvania, he must file a bond with the Pennsylvania Milk Marketing Board.

The Order 4 milkshed covers the States of Delaware, Maryland, Pennsylvania, Virginia, New Jersey and West Virginia. Of these States, New Jersey and Pennsylvania, which represent 65 percent of the Order 4 milk supply, have security laws to protect the financial status of dairy farmers when a handler buying their milk is unable to pay them.

As indicated, the recent legislation in New York and Pennsylvania advancing the payment dates and updating the security laws have strengthened the financial positions of dairy farmers under both Orders 2 and 4. About 84 percent of the milk priced under these two orders is produced in New York and Pennsylvania.

The changes in the Order 2 payment provisions adopted under Issue No. 7 in this partial decision were designed and proposed to accelerate payments to producers and ameliorate adverse economic consequences caused by differences between the order payment obligations of Order 2 handlers with the terms of payment required under New York and Pennsylvania State law. In addition, the adopted changes in the Order 2 payment dates will also bring Order 2 into conformity with other nearby Federal orders. The changes will result in comparable exposure to financial risk and in similar rates of cash flow for dairy farmers whose milk is pooled under Orders 1, 2, and 4. For instance, the amended Order 2 payment provisions will reduce the maximum number of days of milk production for which dairy farmers have not received payment from 56 to 37, which is the same maximum financial exposure of dairy farmers supplying milk for Orders 1 and 4. Similarly, these changes also reduce the average financial exposure of producers under Order 2 from 41 days to 27 days, which is identical with the average exposure under the Order 4 payment provisions and 2.3 days' less financial exposure than under the payment terms of Order 1, which provides a later date for partial payments.

At the hearing, there was considerable discussion about the importance of applying uniform terms and provisions to handlers regulated under the three Northeast orders. Several witnesses acknowledged the significance of this consideration. However, even though an NFO witness testified that the cooperative had implemented its accelerated billing, collection and payment program in the Order 1 market, the cooperative did not propose that the Order 1 payment provisions be amended in a manner similar to those proposed for Orders 2 and 4 so that uniform payment provisions would be applicable under all three orders in the northeast region.

The milksheds for the Order 1 and 2 markets overlap extensively in New York State. For instance, market data for December 1987 show that in 24 such New York counties there were 1,292 producers supplying milk for Order 1 handlers and 3,881 dairy farmers shipping milk to Order 2 handlers. The record indicates that dairy farmers whose milk has been marketed under Order 2 are solicited regularly by proprietary handlers and cooperatives from Order 1. Adopting different minimum terms for paying producers under these two orders would only intensify the competition for dairy farmers and complicate the procurement problems of regulated handlers.

Many of the handlers who would be required to make earlier and more frequent payments to producers and to the producer-settlement fund if NFO's proposal were adopted expressed vigorous opposition to the proposed amendments. Handlers objected primarily to the impact of the proposal on their own cash-flow position, and on the cost of preparing and issuing extra checks. Milk handlers, like dairy farmers and any other business entities, are not immune to cash-flow problems. Handlers' largest customers are supermarket chains, for whose business they must compete with other handlers. One of the elements of such competition is apparently the terms of payment required by the handler. Other major customers are school districts and institutions which, according to the record, often pay for the milk they receive as many as 60–90 days later.

The extra costs required of handlers to implement the proposed payment plan would place them at a significant disadvantage in competing with unregulated handlers and with handlers

regulated under other orders. In addition to the potential for handlers' cash flow problems, the administrative cost of adopting NFO's proposed payment plan (70 cents per check, according to NFO's experience) is clearly not insignificant. Further, the record indicates that the costs of such a plan to handlers would be expected to exceed its benefits to producers.

According to the record, handlers can, and some do, choose to pay their producers more frequently than the States of New York and Pennsylvania currently require. These payment arrangements apparently are part of, or instead of, premium payments to producers, and are negotiated between a handler and the producers or cooperatives supplying milk to the handlers. Handlers should continue to be free to explore and adopt such payments arrangements independently, as NFO did, without having the substantial burdens of a more-frequent-payment plan imposed on them. Therefore, for these reasons alone, the NFO proposals should not be adopted.

A further argument against adoption of NFO's payment proposals is the lack of widespread producer support for their adoption. Except for the three cooperatives identified earlier as supporters of NFO's plan for accelerated payments to producers, no other producer groups testified in favor of the three-times-per-month payment plan. A spokesman for Dairylea and Eastern Milk Producers cooperatives, which represent more than 30 percent of the Order 2 producers, stated that the Boards of Directors of these two organizations reviewed the terms of NFO's proposed payment plan with their members and found no support among their members for such a payment plan. The Pennmarva Dairymen's Federation, which represents about 90 percent of the producers supplying milk for Order 4, took no position with respect to the NFO payment plan.

NFO and the three cooperative associations that supported the accelerated payment proposals represent less than 4 percent of the milk pooled under Order 2, while NFO represents less than 1 percent of the milk pooled under Order 4. Dairylea and Eastern Milk Producers, cooperative associations representing about 30 percent of Order 2 producers, opposed adoption of the proposals. No producer groups supplying the Order 4 market, other than NFO, supported the proposals. Although a number of individual dairy farmers indicated their support for more frequent payments to producers in testimony at the hearing and in letters submitted to the Department after the hearing, these producers represent only a very small percentage of the producers who would be affected by adoption of the proposals. It is evident that board general support for NFO's payment proposals has not been shown at this time.

A motion for sanctions against NFO was filed with the post-hearing brief submitted on behalf of Kraft, Inc., Pollio Dairy Products Company and Friendship Dairy. The request was attached to a copy of an advertisement placed by NFO in a New York magazine or newspaper targeted at a rural audience. The advertisement urged producers to file letters with the Hearing Clerk in support of NFO's proposals, and provided a form letter suitable for filing, with blanks where individual information could be filled in. The proprietary handlers' motion for sanctions is apparently based on alleged misrepresentations of the record contained in the advertisement as examples of the benefits to be gained through adoption of the proposals. The motion fails to indicate what type of sanction is requested and fails to note any provision of the applicable Rules of Practice which authorize or require a sanction.

Any person, whether or not a participant at a formal rulemaking hearing, is always free to file a brief or similar document in a timely fashion after the hearing. However, under the applicable Rules of Practice "Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein, and, in any case, shall not be considered in the formulation of the marketing agreement or marketing order." (7 CFR 900.9(b). Consequently, all timely received briefs and letters were filed and considered but all factual material therein which was not "adduced at the hearing or subject to official notice" was not considered in reaching this decision. As noted, the NFO proposals have not been adopted based on the record of this proceeding. In view of these circumstances, it is considered unnecessary to act on the motion for sanctions. It is curious to note, however, that this advertisement, which apparently was made widely available to dairy farmers in a number of different publications throughout the milksheds of both Order 2 and Order 4, and which made communications to the Hearing Clerk as effortless as possible, drew responses from only 56 of the approximately 21,000 dairy farmers who would be affected by the proposed changes in the orders' payment provisions.

Exceptions to the recommended decision filed on behalf of NFO began with 2 general criticisms followed by 5 specific exceptions to findings in the recommended decision, and ended with several "key arguments" which NFO stated had not been addressed in the decision. These arguments related to delays in payments to dairy farmers. As such, they are discussed under "(3)." below, dealing with the cash flow problems of dairy farmers.

NFO accused the Secretary of ignoring evidence and arguments put forward by proponents in support of the proposals. The general exceptions stated that, in developing the recommended decision, the Department maintained a pre-existing position of opposition to the proposals without regard for the record of the hearing. The second general exception charged that the recommended decision relied on a lack of widespread producer support in denying the proposals instead of considering the economic and policy merits of the issue.

Contrary to NFO's assertions, all of the record evidence relating to the accelerated payment plan was considered and discussed in the recommended decision. The decision provides several objective and adequate bases for not adopting NFO's payment proposals regardless of the Department's initial willingness to hear the proposals.

The Department's decision to deny NFO's proposals was not based solely on a lack of producer support and handler opposition, as exceptor implies. Although the decision describes lack of widespread producer support as a further argument against adoption of NFO's payment proposals, other more significant factors were considered in detail.

The decision acknowledges that while NFO proposals are supported by some producers supplying milk for these two markets, other producers covered under Orders 2 and 4 do not support the proposed payment plan. Also, objections to the proposals were voiced by many of the handlers regulated under Orders 2 and 4. Although all of the individual dairy farmers who were bussed to the hearing by NFO and testified were in favor of the proposed payment plan, it is evident that there are substantial differences of opinion among producers and handlers covered by these two orders as to whether more frequent and earlier payments to producers than those adopted under Issue 7 in this decision are desirable. This significant

opposition places considerably more burden on proponents to show that their accelerated payment plan, which would impose additional payment obligations on regulated handlers, is needed to assure the maintenance of orderly marketing under the two orders. Proponents did not meet this burden.

The NFO comments specifically objected to a statement in the decision attributed to the Dairylea/Eastern witness that the Boards of Directors of these two organizations reviewed the terms of NFO's proposed payment plan with their members and found no support among their members for such a payment plan. He contended that this statement implied that a direct membership survey was made when in fact that was not done. Actually, the record indicates that, "Both Eastern and Dairylea have reviewed the proposal for three times a month payment with our Board of Directors, and we have found no support on the part of our membership for three times a month payments." Although the record is not specific as to how the Board determined lack of producer support, it is clear that they found no support among their members for NFO's payment proposals. Board members of a cooperative, (be it Dairylea, Eastern or NFO) are charged with the responsibility of reflecting the veiws of the dairy farmers they represent. For that reason, the Board's position on a particular issue should be considered to reflect the views of the cooperative's membership.

NFO's exceptions to specific findings of the decision are described and discussed below:

(1) NFO's exceptions asserted that in determining that the administrative cost of the NFO proposals would be burdensome to handlers, the Department relied entirely on the insignificant cost to handlers of issuing one extra check per month.

As indicated in the decision, handlers were primarily concerned with the impact of NFO's payment plan on their cost of doing business. The uncontested estimates by handlers of the cost of making three payments on earlier dates instead of two payments on later dates of each month reflect the adverse financial impacts on the cash flow positions of such persons and are in addition to the administrative costs of writting additional checks for milk. The decision concludes that imposing such extra costs on handlers regulated under Orders 2 and 4 would place them at a significant disadvantage with unregulated handlers and handlers regulated under other Federal orders.

With respect to the check-writting cost, the decision states that, "In addition to the potential for handlers' cash flow problems, the administrative cost of adopting NFO's proposed payment plan (70 cents per check according to NFO's experience) is clearly not insignificant." The decision clearly emphasizes that the administrative expenses associated with writing more checks is an additional cost factor to handlers, but less significant than the changes in the cash flow positions of such persons would be under NFO's accelerated payment proposals.

NFO also argued in exceptions that if the Department wanted to avoid the extra administrative costs of paying producers three times a month, the objectives of NFO's proposals could be achieved by an accelerated two-times-per-month payment schedule that was suggested by NFO's witness at the hearing. Exceptor took the position that this suggestion was not discussed in the recommended decision.

The accelerated two-times-per-month payment schedule referred to in NFO's exceptions was alluded to in very limited testimony at the hearing by NFO witnesses. NFO did not offer details as to how such a plan would work, and the alternative was not specifically addressed by other hearing participants. The two-times-per-month payment alternative therefore was not explored adequately enough by hearing participants to consider it for adoption. However, the matter of accelerating payment to producers was addressed specifically in this decision under issue no. 7. Payments to Order 2 dairy farmers were accelerated significantly and their financial exposure was reduced substantially by the changes adopted herein. The Order 2 changes align the payment provisions of the three Northeast markets which were involved in this proceeding. Actually, the average financial exposure of producers under Orders 2 and 4 will be identical, and less than the exposure for producers under Order 1 for which no changes were proposed by NFO.

(2) The exceptions state that the Department's reliance on the existing security systems under the Pennsylvania and New York laws to assure producers protection from handler defaults ignores all of those producers not having the benefit of those State's protection and overstates the adequacy of the Pennsylvania and New York security sytems.

The decision states that recent legislative changes in New York and Pennsylvania to update their security laws have strengthened the financial positions of dairy farmers supplying Orders 2 and 4. The security laws for these two states are of particular importance in securing payments for farmers because an overwhelming majority of the milk supply for these two markets originates in these two states. The record evidence indicates a fairly good payment record for claims against the security funds of these two states. The characterization in the exceptions of the $3.5 million in the New York security fund as grossly insufficient for any large default completely ignores both the large majority of handlers covered by bonding and the provision in the New York law for loans from the State to the security fund if needed. However, no security program can assure full payments in all cases to dairy farmers for their milk deliveries if handlers buying their milk cannot pay them. Risk is an inherent part of doing business, and is part of the definition of an entrepeneur. The States of New York and Pennsylvania have enacted laws to reduce the financial risks of dairy farming, and the payment dates adopted in the earlier part of this decision incorporate in the order the State-mandated payment dates. However, financial risks by business entities cannot be eliminated.

(3) NFO's exceptions charge that the recommended decision found that handlers' cash flow problems are more important than farmers', while ignoring evidence of handler liquidity. The comments argue that the record indicates that handlers bill their customers weekly, and that store owners are paid cash for dairy products within 1–10 days after producer milk is processed. NFO descirbes the operators of vertically integrated chain stores and chains of convenience stores as major handlers in both the Order 2 and Order 4 markets, and depicts them as turning farmers' production into cash two to three times before paying farmers for it.

Although the Act expressly authorizes the establishment of payment dates under an order, it does not specify when or how frequently handlers must pay producers. Nor does it require that the payment terms for milk compare favorably with such terms for other agricultural commodities. The payment provisions of a Federal milk order customarily are established on the basis of prevailing marketing conditions, including payment practices already existing in an area or practices that handlers and producers find mutually desirable. Only recently have New York producers enjoyed the benefits of partial payments for their milk, and that change was adopted by the State legislature to bring the terms of payment to New York producers up to the industry-wide

standard. That prevailing market practice is now being incorporated into the Order 2 payment provisions in this decision. The payment plan adopted in this decision, which includes some delay in payment after the delivery of milk to a handler, is used widely throughout the United States, not only to pay milk producers under Federal orders, but to pay manufacturing grade producers and producers delivering milk to unregulated markets, as well as those covered by state regulation.

The NFO exceptions argue that the Department is pursuing a policy requiring farmers, rather than handlers, to finance the dairy industry. On the contrary, farmers are merely expected to bear the capital requirements of dairy farming. In dairy farming, as in most other businesses, capital is required and operating costs are incurred before a return on investment is realized. These requirements are also encountered in the operation of dairy plants. According to the record of this proceeding, handlers customarily wait some time after processed milk is delivered to retail outlets before receiving payment for it. NFO's citation of testimony that "admitted" that fluid milk products are reduced to cash in store owners' hands within 1 to 10 days of processing completely overlooks testimony in the record that grocery store chains are able to dictate most of the terms of trade between milk handlers and retail outlets. Also overlooked is the fact that over half of the milk marketed under Orders 2 and 4 is used in manufactured, rather than fluid, milk products. Many of these manufactured products are quite storeable, and may not be "reduced to cash" for some weeks, or even months.

An NFO witness' statement that an unidentified national dairy processor had told him that the handler bills its customers on a weekly basis may be true, but has no bearing on the amount of time that elapses before such bills are paid. The record contains direct testimony by handlers that supermarkets do not pay for milk delivered to them for 3 to 4 weeks after billing, and by a representative of a handler association that the accounts receivable of its members are not paid for 25–40 days. Most businesses encounter a time lag between producing and delivering a product and receiving payment for it. The record shows that the period of time dairy plant operators customarily wait for payment for their sales of processed milk to retail outlets is as long as the time period dairy farmers wait for payment from milk handlers.

NFO's characterization of the role of vertically integrated chain stores and the operators of chains of convenience stores in both markets as "major" is not supported by the record. Although there apparently are a number of such handlers in the Order 4 market, their relative share of the market is not revealed in record evidence. There is testimony in the record, by an NFO witness, that the largest group of handlers in the two markets is not part of a grocery chain, and would be subject to a longer period of time before being paid for its deliveries of processed milk to grocery stores than are handlers who are connected with grocery store chains. The characterization of vertically integrated handlers' ability to turn the farmers' product into cash two or three times before paying the farmer is of limited use in determining payment provisions appropriate for all of the parties affected by the order.

The "key arguments" raised at the end of NFO's exceptions deal with the questions of why dairy farmers must wait for payment after delivering milk to a handler when other farmers are paid for their crops on delivery; why partial payments to producers pooled under the northeast orders are required less frequently or at lower rates than partial payments to producers whose milk is pooled under some other milk orders; and why dairy farmers should have to supply any of the capital required by the dairy industry in view of handlers' superior ability to raise capital.

NFO's argument that prevailing order payment terms uniquely disadvantage dairy farmers, as opposed to the producers of other commodities, has no validity because, as noted above, milk order payment provisions reflect payment practices already extant throughout the dairy industry. Producers of other commodities may be paid upon delivery of their product because of marketing conditions unique to or traditional for those commodities. It should be noted that, in the case of grain producers, product is harvested and delivered only once per year, making a far longer period between payments than the twice-per-month payments common in the dairy industry. In one respect, the milk order program does delay final payment to producers by requiring handlers to complete reports of their receipts and utilization of milk during the previous month and then allowing time for a blend price to be calculated so that producers can be paid on the basis of the use of their milk. This built-in delay in payment is a necessary disadvantage of administering a classified pricing program.

NFO's contention that producers whose milk is pooled under Orders 2 and 4 should be subject to the more favorable payment terms enjoyed by dairy farmers supplying several other markets, whose orders provide three payments per month and/or increase the partial payment rate, ignores the fact that the payment terms of Order 2 and 4 must be based on the hearing record dealing with those orders. The payment provisions for the few markets that require more frequent or larger partial payments were established on the basis of hearing records reflecting marketing conditions under those orders. Most of these markets have considerably higher Class I use percentages than do the New York-New Jersey and Middle Atlantic markets. The existence of more favorable payment terms under other Federal orders does not justify the adoption of such provisions under these two orders.

As discussed earlier, the customary delays in being paid for milk produced should be considered part of the capital cost of owning and operating a dairy farm. Even if, as proponent claims, handlers have a superior ability to raise capital, that is not a sufficient justification to require them to supplement the capital requirements of dairy farmers.

(4) NFO described the decision as concluding that adoption of NFO's proposals would somehow add to the procurement problems of Order 2 handlers, and disagreed with that conclusion. The decision states that providing different payment terms under Orders 1 and 2 would only intensify the competition for dairy farmers and complicate the procurement problems of regulated handlers. Counsel for NFO reiterated the cooperative's hearing position in exceptions by contending that its payment plan should be adopted for Order 2 so that handlers operating under that order would have an advantage over Order 1 handlers in procuring milk supplies, and to offset the blend price advantage that Order 1 handlers now enjoy because of the market's higher Class I utilization. It would be inappropriate to adopt a plan to pay dairy farmers under Order 2 to correct pooling and pricing problems between Orders 1 and 2.

(5) NFO also excepted to the Department's finding in the recommended decision that accelerated payment plans should remain voluntary. Since that option would be available even if NFO proposals were adopted, the cooperative contended that the minimum payment terms under Orders 2 and 4 need to be raised to a more

justifiable level. As indicated, the record in this proceeding does not indicate that it would be justifiable to impose more stringent payment requirements on handlers operating in these two markets.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. to the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the request to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the New York-New Jersey order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the New York-New Jersey marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Referendum Order to Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended, regulating the handling of milk in the New York-New Jersey marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be April 1989.

The agent of the Secretary to conduct such referendum is hereby designated to be N. K. Garber, Acting Market Administrator.

List of Subjects in 7 CFR Part 1002

Dairy products, Milk, Milk marketing orders.

Signed at Washington, DC, on December 12, 1989.

Jo Ann R. Smith,

Assistant Secretary for Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Milk in the New York-New Jersey Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the New York-New Jersey marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the New York-New Jersey marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on September 20, 1989 and published in the **Federal Register** on September 26, 1989 (54 FR 39377) shall

be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. The authority citation for 7 CFR part 1002 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1002.22 [Amended]

2. In § 1002.22 Additional duties of the market administrator, paragraph (m)(2) is amended by changing "15th" to "14th".

3. In § 1002.30 Reports of receipts and utilization, the introductory text is revised to read as follows:

§ 1002.30 Reports of receipts and utilization.

Each handler, except a handler receiving own farm milk and not required to be listed pursuant either to § 1002.11 or § 1002.12, shall report each month to the market administrator for the preceding month in the manner and on the forms prescribed by the market administrator with respect to each pool plant, partial pool plant, pool unit or partial pool unit operated by such person, the information set forth in paragraphs (a) through (d) of this section. Such report shall be physically recieved at the office of the market administrator no later than the close of business on the 10th day of the month. Other information required to be reported no later than the 10th day of the month pursuant to §§ 1002.25 and 1002.31 must also be physically received by the market administrator no later than the 10th day of the month.

* * * * *

4. In § 1002.50a Class prices, the introductory text is revised to read as follows:

§ 1002.50a Class prices.

For pool milk received during each month from dairy farmers or cooperative associations of producers, each handler shall pay per hundredweight not less than the prices set forth in this section, subject to the differentials and adjustments in §§ 1002.51 and 1002.81. Any handler who purchases or recevies milk during any month from a cooperative association of producers but does not operate the plant or unit receiving this milk from producers shall pay the cooperative association on or before 2 days before the last day of the month if paid by check, or the last of the month if paid in cash or cash equivalent, at not less than the lowest class price pursuant to this section for the preceding month for milk received from such cooperative during the first 15 days of the month, and shall pay the cooperative association on or before the 15th day of the following month the balance due for milk received during the month from such cooperative at not less than the class prices pursuant to this section subject to the differentials and adjustments set forth in §§ 1002.51 and 1002.81 applicable at the plant at which the milk is first received from the cooperative association. Such payments to a cooperative association shall be deemed not to have been made until the payments have been received by the cooperative association.

* * * * *

5. In § 1002.80 Time and rate of payments, paragraphs (c) through (f) are redesignated as paragraphs (d) through (g); paragraphs (b) is redesignated as paragraph (c) and revised; paragraph (a) is redesignated as paragraph (b) and newly designated paragraph (b) introductory text is revised; and a new paragraph (a) is added, as follows.

§ 1002.80 Time and rate of payments.

(a) On or before the last day of the month, each handler shall make payment to each producer for milk received from such producer during the first 15 days of the month at not less than the lowest class price for the preceding month.

(b) On or before the 20th day of the month, each handler shall make payment, pursuant to paragraphs (c), (d), (e), (f), and (g) of this section, to each producer for the balance due for all milk received from such producer during the proceding month at not less than the uniform price for such month, subject to the following adjustments:

* * * * *

(c) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk, each handler, on or before 2 days before payments are due to individual producers if paid by check, or the same day such payments are due to individual producers if paid in cash or cash equivalent, shall pay the cooperative association for milk received during the month from the producer-members of such association an amount equal to not less than the total amount otherwise due such producer-members as determined pursuant to paragraphs (a) and (b) of this section.

* * * * *

§ 1002.85 [Amended]

6. § 1002.85 Payments to the producer-settlement fund, is amended by changing the language "21st" to "16th".

§ 1002.86 [Amended]

7. In § 1002.86 Payments out of the producer-settlement fund, paragraph (a) is amended by changing "22nd" to "17th", and paragraph (b) is amended by changing "25th" to "20th".

§ 1002.89 [Amended]

8. In § 1002.89 Cooperative payments for market services, paragraph (f)(1) is amended by changing "25th" to "20th".

PART 1004–MILK IN THE MIDDLE ATLANTIC MARKETING AREA

Note: There are no proposed amendments to this part at this time.

Marketing Agreement Regulating the handling of Milk in the New York-New Jersey Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provision referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1002.1 to 1002.90, all inclusive, of the order regulating the handling of milk in the New York-New Jersey marketing area (7 CFR part 1002) which is annexed hereto; and

II. The following provisions:

§ 1002.91 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of April 1989, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typograhical errors which may have been made in this marketing agreement.

§ 1002.92 Effective date.

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitation herein contained and not otherwise, have hereunto set their respective hands and seals.

(Seal)

(Signature)

BY _____

(Name) (Title)

(Address)
Attest
Date

[FR Doc. 89-29398 Filed 12-15-89; 8:45 am]
BILLING CODE 3910-02-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052-AB12

Organization; Reorganization Authorities For System Institutions

AGENCY: Farm Credit Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Agricultural Credit Act of 1987, Public Law 100-233, amended the Farm Credit Act of 1971 (Act) by establishing the procedure under with a Farm Credit institution may terminate its Farm Credit charter by becoming chartered as a financial institution under other Federal or State authority. The Act imposes certain requirements on an institution that wishes to terminate its status as a Farm Credit institution and authorizes the Farm Credit Administration (FCA) to impose by regulation such other conditions as the FCA considers appropriate. The FCA is soliciting comments from the public on the implementation of the statutory requirements and such other conditions that members of the public believe are appropriate in connection with an institution's exercise of this termination authority.

DATE: Comments must be received on or before January 31, 1990.

ADDRESS: Comments may be mailed or delivered (in triplicate) to Anne E. Dewey, General Counsel, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Robert S. Child, Credit Specialist, Office of Financial Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4402

or

Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090 (703) 883-4020.

SUPPLEMENTARY INFORMATION: The Agricultural Credit Act of 1987, Public Law 100-233, amended the Farm Credit Act of 1971 (Act) 12 U.S.C. 2001, *et seq.* by adding, among other provisions, a new section 7.10—Termination of System Institution Status. Section 7.10, provides that a Farm Credit institution may terminate its status as a Farm Credit institution if it satisfies the following requirements: (1) 90-day advance notice to the FCA; (2) approval by the FCA Board; (3) approval by a Federal or State authority of a charter for a bank, savings and loan, or other financial institution; (4) the payment by the institution of the amount by which total capital of the institution exceeds 6 percent of its assets, such payments to be made to the Farm Credit Assistance Fund if the termination occurs prior to January 1, 1992, or to the Farm Credit System Insurance Fund if the termination occurs after such date; (5) the institution pays or makes adequate provision for the payment of all outstanding debt obligations of the institution; (6) the termination is approved by a majority of the stockholders of the institution voting, in person or by written proxy, at a duly authorized stockholders' meeting, held prior to giving notice to the FCA Board; (7) the institution meets such other conditions as the FCA Board, by regulation, considers appropriate.

In addition to the requirement of section 7.10 that a plan of termination be submitted to the FCA Board for approval following an affirmative stockholder vote, section 7.11 of the Act requires that any plan of termination, together with all information that will be distributed to the shareholders, must be submitted to the FCA Board for approval prior to the shareholder vote. The information to be distributed to shareholders must include an enumerated statement of the anticipated benefits and potential disadvantages of such action. The FCA is required to act within 30 days on a plan submitted for approval prior to the stockholder vote. If the plan is disapproved by the FCA Board, the notice of disapproval shall specify the reasons for such disapproval.

The FCA requests public comments on issues raised in connection with this new authority. Comments received will be considered in the development of proposed regulations implementing these statutory provisions. The FCA, in interpreting this statutory authority and developing such regulations as may be necessary, seeks to ensure that the overall intent of section 7.10 is carried out. Specifically, institutions must be afforded a meaningful opportunity to terminate their Farm Credit status in accordance with the statutory requirement, but should not be able to take actions that may be designed to circumvent those statutory requirements. The FCA is seeking any comments members of the public deem relevant to these matters and, in particular, seeks comments relating to the following:

1. New section 7.10 provides that an institution that terminates its Farm Credit charter shall pay an exit fee equal to the amount by which the total capital of the institution exceeds 6 percent of the institution's assets. The Act does not define the terms "total capital" or "assets" as they are used in this section. In seeking to define those terms several questions are raised:

(A) Is there any basis for not including the institution's allowances for losses in the computation of total capital?

(B) If all allowances are not included, should the amount of the allowances that are included be limited to the general portion of the allowance, that allowance based on generally accepted accounting principles (GAAP), or some formula (e.g., a specific percentage of such allowance)?

(C) Should the computation of assets be based exclusively on the requirements of GAAP or should it include modifications?

(D) Should assets and total capital be measured at one point in time or based on an average over some prior period, such as an average over several months, 12 months, or several years?

(E) From what point in time should the computation of assets and total capital be based? For instance, should such computation be based on the data of the shareholders' meeting, the date of application to FCA, or some other date?

2. Section 7.10 requires the terminating institution to pay or make adequate provision for the payment of all outstanding debt obligations.

(A) Should the terminating institution be required to pay off all obligations to the Farm Credit Bank (FCB) and other Farm Credit institutions or should a phased payoff be authorized?

(B) If a terminating association can pay off its loan to the FCB on a phased basis, is the association authorized or required to establish an "other financing institution" (OFI) relationship with the FCB under section 1.7 of the Act?

(C) If the terminating institution is a bank, is there any acceptable basis upon which such bank can satisfy its joint and several liability on Systemwide and consolidated notes and bonds, and its liability for interest payments on the individual obligations issued by banks operating under the same title of the Act? See section 4.4 of the Act.

(D) What are the appropriate ways to measure and provide for the payment of other contingent and accrued liabilities? Examples of such liabilities include, but are not limited to: FCA assessments, tax liability, accounts payable, interest payable, loss-sharing agreements, legal suits, and guarantee agreements.

(E) Can an association terminate its Farm Credit status without first redeeming and retiring any preferred stock it issued to the Farm Credit System Financial Assistance Corporation?

3. Section 4.3A of the Act requires the FCA to establish minimum permanent capital standards for all Farm Credit institutions and restricts the ability of institutions to reduce their capital if they do not meet such standards.

(A) If the terminating institution is an association, to what extent must the capital adequacy position of the FCB be taken into consideration before the FCB can retire equities owned by the terminating association?

(B) If the terminating institution is an association, to what extent can the FCB retire any stock owned by such association if the FCB has issued and continues to have outstanding preferred stock issued to the Farm Credit System Financial Assistance Corporation?

(C) Should investments in other Farm Credit institutions be regulated as to retirement?

(D) If the terminating institution is an association, should the FCB be required to retire any stock, surplus, allocated or unallocated equities, other than equities that were purchased by the terminating association?

4. The FCA is analyzing whether and to what extent a proposed termination should be restricted or delayed until the territory chartered to terminating institution(s) is chartered to a new or existing Farm Credit institution. The question may present special problems if a FCB seeks to terminate its Farm Credit affiliation when one or more of the associations in the district want to retain their Farm Credit charters.

(A) To what extent could simultaneous terminations of associations be permitted if such terminations would have a major impact on the remaining district institutions?

(B) What provisions must be made for those associations that seek to retain their Farm Credit charters?

5. Section 7.10 requires a terminating institution to pay an exit fee equal to the amount by which the total capital of the institution exceeds 6 percent of assets of the institution. The FCA is analyzing whether and to what extent measures should be implemented to ensure that an institution does not circumvent this statutory requirement. For instance, to what extent should the regulations prohibit and/or require the recapture of extraordinary expenditures which were designed for, or had the effect of, reducing capital or increasing assets?

6. Section 4.12 of the Act provides for the voluntary liquidation of Farm Credit institutions. The FCA questions whether institutions should be permitted to use this authority to avoid paying the exit fee required under section 7.10. If an institution chooses voluntarily to liquidate and not continue lending operations as a business entity, should the institution be required to pay the 6-percent exit fee? Should the regulations preclude an institution from undertaking any type of reorganization outside the System without paying the exit fee? Are there other means of addressing these concerns?

7. Should dissenting shareholders of an institution that terminates its status be afforded rights to continue as borrowers and stockholders of a Farm Credit institution? If so, to what extent are such stockholders entitled to a distribution of the equity of the terminating institution?

8. Sections 4.13 and 4.14 of the Act provide for certain rights to borrowers from Farm Credit institutions. The FCA seeks input regarding whether and to what extent any rights afforded to borrowers under the Act would continue to be available to the borowers of an institution following termination of Farm Credit status, particularly if it does not become an OFI under section 1.7 of the Act.

9. Section 7.11 of the Act requires that the shareholder disclosure material be submitted to the FCA for approval prior to its distribution to shareholders. What, if any, specific disclosure requirements should be required as part of the proxy material? General areas which the FCA believes should be addressed include, but are not limited to, the following:

(A) terms for repayment of the direct loan;

(B) source and terms available for alternative funding;

(C) financial projections regarding the new institution;

(D) rights of stockholders, particularly as they affect stockholders who previously owned protected stock;

(E) effect of the termination on borrower rights;

(F) right of shareholders to reconsider the termination vote;

(G) the regulatory environment of the successor institution; and

(H) the existence of any continuing contingent liabilities that will not be paid immediately upon termination.

A notice of proposed rulemaking will be published in due course after consideration of the comments received in response to this notice.

Dated: December 12, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89-29345 Filed 12-15-89; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

[T.D. 89-106]

Petitioners' Desire To Contest Decision Denying Domestic Interested Party Petition Concerning the Classification of Certain Stainless Steel Products

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Petitioners' Desire to Contest Decision on Domestic Interested Party Petition.

SUMMARY: This document advises the public of the desire of several interested parties to contest Customs decision denying their petition requesting reclassification of certain imported stainless steel products made from exported United States scrap steel. The petitioners have advised Customs of their intention to pursue this matter through appropriate court proceedings.

DATE: December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Value, Special Programs and Admissibility Branch, (202) 566-2938.

SUPPLEMENTARY INFORMATION:

Background

On April 29, 1987, a notice was published in the **Federal Register** (52 FR 15512) indicating that Customs had received a petition dated November 14, 1986, on behalf of certain domestic interested parties engaged in the manufacture of stainless steel products, filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), requesting reclassification of certain stainless steel products processed abroad from exported U.S. steel scrap and then reimported for further processing. The imported steel products under consideration include primarily stainless steel sheet, plate and strip, that are manufactured abroad from exported U.S. scrap metal which is used as a raw material. The scrap-based steel products have been imported by industrial

consumers under item 806.30, TSUS, for further processing. Under item 806.30, TSUS, a partial duty exemption has been provided for articles of metal manufactured or subjected to a process of manufacture in the United States, exported abroad for further processing, and returned to the United States for still further processing. Duty is assessed only on the value of the foreign processing. The corresponding provision under the Harmonized Tariff Schedule of the United States (HTSUS), which became effective on January 1, 1989, is subheading 9802.60.

On July 23, 1984, Customs issued Ruling 553126 which held that item 806.30, TSUS, was applicable to steel scrap of U.S. origin exported for melting and casting into basic metal shapes and forms that are then returned to the United States under item 806.30, TSUS, for further processing by industrial users.

On November 14, 1986, a petition was filed on behalf of several domestic producers of specialty steel products. Petitioners challenged the prior ruling on the basis that scrap-based stainless steel products, imported by industrial consumers, were ineligible for item 806.30, TSUS, tariff treatment. The petitioners argued that this classification was inapplicable to the imported scrap-based stainless steel products and that the legislative history of the tariff provision runs contrary to the current interpretation. Other arguments advanced concern the nature of scrap metal and its meaning under the tariff provision. It is asserted that scrap is not a "manufactured" product within the meaning of item 806.30, TSUS, and its counterpart provision, subheading 9802.00.60, HTSUS, and that the test used to determine whether scrap is a metal article of U.S. manufacture is ambiguous and permits the application of item 806.30, TSUS, and subheading 9802.00.60, HTSUS, to foreign scrap contrary to the requirements of the statute. Finally, petitioners generally contend that the foreign operations do not produce an intermediate product requiring further processing for finishing. Instead, the foreign process results in finished goods that do not require further processing in the United States. Selling flat-rolled steel products to industrial consumers constitutes the end use of the imported steel products.

Six of the eight comments received in response to the **Federal Register** notice of April 29, 1987, supported the correctness of the current application of the tariff provision and supported denial of the petition, while the remaining two comments supported the petition and the requested reclassification.

Decision on Petition and Notice of Petitioners' Desire to Contest

After careful analysis of the comments received in response to the notice and further review of the matter, the petitioners were informed, by letter dated March 14, 1988 (CLA-2 CO:R:CV:V 554750), that Customs had determined the application of item 806.30, TSUS, to be correct and, accordingly, the petition was denied. Customs stated (1) that where the legislative purpose is evident from the plain meaning of the written text, and the language is neither ambiguous nor uncertain, no occasion arises to consult extrinsic data for clarification; (2) with respect to whether or not metal scrap is considered a manufactured product, it is clear that, whether regarded as an end product or a by-products, scrap metal results from a manufacturing process. The statute requires that an article of metal be manufactured or subjected to a process of manufacture in the United States. There is no restriction as to the shape or form that the U.S. metal article must take; (3) obsolete scrap qualifies as a U.S. manufactured metal article if the discarded or worn-out articles from which the obsolete scrap was obtained was manufactured or subjected to a process of manufacture in the United States. Merely subjecting foreign obsolete scrap to shredding, crushing or other reclamation activities in the U.S. will not result in the scrap being considered a metal article of United States manufacture; (4) with respect to whether the imported articles are finished products, as petitioners claim, although the imported stainless steel plate, sheet and strip are articles of commerce in that they can be bought and sold, they still remain in the condition of basic metal shapes that must be further manufactured into final end-use products. In their imported condition, the steel shapes are not dedicated to special use but must be further processed for final consumer use.

In response to Customs decision to deny the petition, on April 12, 1988, the petitioner filed notice of their desire to contest the decision in accordance with section 516(c), and Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.23, Customs Regulations (19 CFR 175.23).

Customs has reconsidered the matter in light of petitioners' letter, but remains of the opinion that its March 14, 19188, decision on the applicability of item 806.30, TSUS, or subheading 9802.00.60, HTSUS, is correct. That decision will stand in the absence of a contrary judgment rendered by the U.S. Court of International Trade or the U.S. Court of Appeals for the Federal Circuit.

Authority

This notice is published under the authority of section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.24, Customs Regulations (19 CFR 175.24.).

Drafting Information

The principal author of this document was Arnold L. Sarasky, General Classification Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other customs offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Dated: November 22, 1989,

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 89-29364 Filed 12-15-89; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 177

Withdrawal of Proposed Change of Practice Regarding Tariff Classification of Imported Television Tubes and Chassis

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed change of practice; withdrawal.

SUMMARY: This document withdraws a proposed change of practice regarding the tariff classification of imported color television picture tubes and television chassis, not assembled together at the time of importation but nonetheless entered as a single tariff entity, as unfinished articles. Under the proposed change of practice, published in the **Federal Register** of May 16, 1988 (53 FR 17226), television pictures tubes would have been classified as a separate tariff entity even though they may have been entered with a similar number of compatible television chassis. The Omnibus Trade and Competitiveness Act of 1988, effective October 1, 1988, changed the tariff treatment of television picture tubes imported with television chassis so that the tubes are generally classifiable as a separate tariff item. Thus the proposed change of practice has become moot and is being withdrawn.

DATE: Withdrawal effective December 18, 1989.

FOR FURTHER INFORMATION CONTACT: John Valentine, Commercial Rulings Division, (202) 566-8181.

SUPPLEMENTARY INFORMATION:

Background

On May 16, 1988, Customs published a proposed change of practice in the Federal Register (53 FR 17226), pursuant to which the Customs Service proposed to treat color television picture tubes as a separate tariff item, even though they may have been entered with a similar number of compatible television chassis. This would have changed the existing practice of classifying such merchandise as an unfinished unassembled television receiver which was established pursuant to Customs Service ruling 553020 of November 15, 1984. A petition filed by a domestic interested party challenging that practice was denied in a Federal Register notice of February 19, 1985 (59 FR 7026).

Discussion

Five comments were received in response to the proposed change of practice notice. Three of the comments favored the proposal. Two commenters, in part representing the same party, opposed the proposed change.

Prior to the substantive consideration of the above comments and the rendering of a final decision regarding the proposed change of practice, the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418) was enacted on August 23, 1988. It changed the tariff treatment of television picture tubes so that the tubes, in general, are separately classifiable even though they may have been entered with a similar number of compatible television chassis. The change was effecive October 1, 1988.

Conclusion

The change in the tariff treatment of television picture tubes, imported with television chassis, effectuated by the above referenced legislation, has made the proposed change of practice moot. Accordingly, the proposed change of practice is being hereby withdrawn.

Drafting Information

The principal author of this document was Arnold L. Sarasky, General Classification Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Approved: December 7, 1989.

Samuel H. Banks,

Acting Commissioner of Customs.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-29365 Filed 12-15-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 255a

[DoD Directive 6040.aa]

Confidentiality of Medical Quality Assurance (QA) Records

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense has given high priority to the establishment and continuation of medical quality assurance programs throughout the military medical care system. An effective quality assurance program is predicated on peer assessment of professional practice. In order to foster participation in meaningful discussion and critical review of care, it is critical that the confidentiality of peer review processes be protected. In 1987, Congress provided confidentiality for medical quality assurance documents in the DoD Authorization Act, recognizing that confidentiality is important to prevent public disclosure of facts and opinions that might cause harm to participants in the process of quality assurance activities. At the same time, allowance is made for disclosure of specified information when required for authorized quality monitoring, patient safety, or administrative functions. This proposed rule adheres closely to the specific provisions of the statute.

DATE: Written comments on this proposed rule are due by January 17, 1990.

ADDRESSES: Comments should be sent to: Office of the Assistant Secretary of Defense for Health Affairs (Professional Affairs and Quality Assurance), The Pentagon, Washington, DC 20301-1200.

FOR FURTHER INFORMATION CONTACT: CDR Barbara Ramsey, NC, USN at (202) 695-6800.

SUPPLEMENTARY INFORMATION: Regarding regulatory procedures, this proposed rule is not a major rule under Executive Order 12291. Also, we certify that it would not have a significant impact on small entities under the Regulatory Flexibility Act. We welcome public comment on this proposed rule. We anticipate publication of a final rule approximately 30 days after the close of the comment period.

Title 32, chapter I, subchapter M, is proposed to be amended by establishing a new part 255a, as follows:

PART 255A—CONFIDENTIALITY OF MEDICAL QUALITY ASSURANCE (QA) RECORDS

Sec.

Authority: 10 U.S.C. 1101; 5 U.S.C. 301.

§ 255a.1 Purpose.

This part implements 10 U.S.C. 1102 in accordance with policies in 5 U.S.C. 552 and 552a, DoD Directive 6025.13 [1], and DoD Directive 6025.11 [2];

§ 255a.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense (OSD), the Military Departments (including their National Guard and Reserve components), the Joint Chiefs of Staff (JCS), the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities.

(b) Civilian healthcare entities or individuals, when they provide medical QA information on healthcare of DoD beneficiaries to the Department of Defense.

(c) 10 U.S.C. 1102 is applicable to the Peer Review Organization (PRO) Program of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as specified in DoD 6010.8-R [3].

§ 255.3 Definitions.

Aggregate statistical data. An assembled collection of numerical facts and other data derived from various DoD health program activities. Names, social security numbers, or other specific information that will identify or reasonably lead to identification of individual healthcare providers, patients, healthcare facilities, or other specific organizational entities may not be included in aggregate statistical data.

Credentials. Documents providing evidence of education, training, licensure, experience, and expertise of a healthcare provider.

Healthcare provider. Any military or civilian healthcare professional under regulations of a Military Department, who is granted clinical practice privileges or is in training to provide

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.

[2] See footnote 1 to § 255a.1.

[3] Copies may be obtained, at cost from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

healthcare services in a military MTF or DTF or who is licensed or certified to perform healthcare services by a governmental board or Agency or professional healthcare society or organization.

Healthcare QA program. Any activity carried out before, on, or after the enactment of 10 U.S.C. 1102 by or for the Department of Defense to monitor and assess the quality of healthcare. This includes activities conducted by individuals, military MTF or DTF committees, contractors, military medical departments, or DoD Agencies responsible for QA, credentials review and clinical privileging, infection control, patient care assessment (including review of treatment procedures, therapeutics, blood use, medication use), review of healthcare records, health resources management review, and risk management review. This does not include the Office of the ASD(HA) (OASD(HA)) or Service review of patient complaints when the conclusions of such reviews are based on the following:

(1) The medical facts of a case.

(2) The usual standards of practice as reflected in professional literature.

(3) Expert opinion when such expert opinion is requested for the purpose of responding to a complaint.

Individual QA action. A provider sanction, privileging action, or other activity on an individual healthcare provider intended to address a quality of healthcare matter. Such an action is based on processes structured by the QA program.

Medical. Include medical, mental health and dental QA records, programs, activities, and information.

QA record. The proceedings, records, minutes, and reports that emanate from healthcare QA program activities and are produced or compiled by the Department of Defense as part of a healthcare QA program.

§ 255a.4 Policy.

It is DoD policy that:

(a) Medical QA records created by or for the Department of Defense, as part of a medical QA program, are confidential and privileged. They may not be made available to any person under the "Freedom of Information Act". As a system of records, they are within the purview of the "Privacy Act" and the healthcare provider who is the subject of an individual QA action may be entitled to the records under the "Privacy Act". With the exception of such a provider, the identities of third parties in the record; i.e., any person receiving healthcare services (patients) from the Department of Defense or any other person associated with the DoD QA program, shall be deleted from the record before any disclosure of the record is made outside the Department of Defense. The identity deletion requirement does not apply to disclosures under 5 U.S.C. 552a.

(b) In compliance with, and subject to, the exceptions in 10 U.S.C. 1102, no part of any medical QA record may be subject to discovery or admitted into evidence in any judicial or administrative proceeding.

(c) In compliance with 10 U.S.C. 1102, a person who reviews or creates medical QA records for the Department of Defense or who participates in any proceeding that reviews or creates such records may not testify in any judicial or administrative proceeding on such records or on any finding, recommendation, evaluation, opinion, or action taken by such person or body for such records, except under this part.

(d) In compliance with 10 U.S.C. 1102, a person or entity having possession of or access to QA records or testimony may not disclose the contents of such record or testimony in any manner or for any purpose except as provided in this part.

(e) Any person who willfully discloses a medical QA record other than as provided in this part, knowing that such record is a medical QA record, shall be subject to adverse personnel action (to include, in appropriate cases, dismissal or separation), and may be liable under 10 U.S.C. 1102 for a fine of not more than $3,000 in the case of a first offense and not more than $20,000 in the case of a subsequent offense.

(f) Information on healthcare providers who are found to be incompetent, negligent, medically or psychiatrically impaired, or guilty of misconduct as defined in DoD Directive 6025.13 or 6025.11 shall be provided to Agencies specified in those Directives.

(g) Information on healthcare providers responsible for care of patients receiving payment for malpractice claims shall be submitted to the National Practitioner Data Bank instituted by Public Law 99-660.

(h) Aggregate statistical information on results of DoD medical QA programs may be provided in response to written requests, unless the information identifies a particular provider or patient or reasonably might lead to such identification.

(i) In compliance with 10 U.S.C. 1102, a person who participates in or provides information to a person or body that reviews or creates medical QA records shall not be civilly liable for such participation or for providing such information if the participation or provision of information was in good faith, based on prevailing professional standards at the time the medical QA program activity took place.

(j) In accordance with 10 U.S.C. 1102, nothing in this part shall be construed as limiting access to information in a record created and maintained outside a medical QA program, including a patient's medical records, on the grounds that the information was presented during meetings of a review body that are part of a health care QA program.

§ 255a.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Health Affairs)* (ASD(HA)) shall monitor implementation of this part.

(b) The *General Counsel of the Department of Defense* (GC, DoD) shall provide legal advice on the interpretation and implementation of this part.

(c) The *Secretaries of the Military Departments,* or designees, shall implement the requirements of this part.

§ 255a.6 Procedures.

The Secretaries of the Military Departments shall issue regulations on confidentiality of medical and dental QA documents. Those regulations shall describe confidentiality protection, as follows:

(a) *Records that are protected from disclosure, except as described in paragraphs (b)(1) through (8) of this section.* Those records include the minutes, data, testimony, and working documents of any medical or dental treatment facility (MTF or DTF), DoD contractor, Military Department, or DoD Agency involved in monitoring, assessing, or documenting quality of healthcare.

(b) *DoD QA records may be authorized for disclosure or testimony to the following.* (1) A Federal Executive Agency, or private organization, if such medical QA record or testimony is needed by such Agency or organization to perform licensing or accreditation functions for DoD healthcare facilities or to perform monitoring, required by law, of DoD healthcare facilities.

(2) An administrative or judicial proceeding commenced by a present or former DoD healthcare provider on the termination, suspension, or limitation of clinical privileges of such healthcare provider.

(3) A governmental board or Agency or a professional healthcare society or organization, if such medical QA record or testimony is needed by such board, Agency, society, or organization to

perform licensing, credentialing, or the monitoring of professional standards of any healthcare provider who is, or was, a member or an employee of the Department of Defense.

(4) A hospital, medical center, or other institution that provides healthcare services, if such medical QA record or testimony is needed by such institution to assess the professional qualifications of any healthcare provider who is, or was, a member or employee of the Department of Defense and who has applied for, or has been granted, authority or employment to provide healthcare services in or for such institution.

(5) An officer, employee, or contractor of the Department of Defense who has a need for such record or testimony to perform official duties.

(6) A criminal or civil law enforcement agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality makes a written request that such record or testimony shall be provided as authorized by law.

(7) A committee of either House of Congress, any joint committee of Congress, or the General Accounting Office (GAO) if such record pertains to any matter within their respective jurisdictions.

(8) An administrative or judicial proceeding commenced by a criminal or civil law enforcement agency or instrumentality referred to in paragraph (b)(6) of this section, but only for the subject of such proceeding.

(c) *Aggregate statistical data.* Nothing in this part shall be construed as authorizing or requiring the withholding from any person or entity, aggregate statistical information on the results of DoD medical QA programs.

Dated: December 12, 1989.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 89-29301 Filed 12-15-89; 8:45 am]

BILLING CODE 3810-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1220 and 1228

RIN 3095-AA46

Disposition of Federal Records

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule updates, clarifies, and reorganizes the procedures governing the disposition of Federal records. It provides information on what documentary materials are subject to these records disposition regulations. This proposed rule distinguishes between the scheduling process and the resulting schedules. It also establishes procedures for the temporary loan of permanent and unscheduled Federal records. This proposed rule affects Federal agencies.

DATE: Comments must be received by February 16, 1990.

ADDRESS: Comments should be sent to Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard at 202-523-3214 (FTS 523-3214).

SUPPLEMENTARY INFORMATION: The National Archives and Records Administration (NARA) reviewed the regulations relating to records disposition to ensure clarity and conformity to current practices. This revision was developed to provide additional information to agencies to assist them in carrying out their responsibilities.

Discussion of Changes

Section 1220.14, which defines terms used throughout subchapter B of 36 CFR chapter XII, is amended to provide definitions of additional terms and to clarify existing terms.

Part 1228 has been reorganized and revised to clarify disposition procedures. Section 1228.1 has been expanded to specify the types of documentary materials the disposition of which is governed by part 1228.

Subparts B, C, and D have been combined into a new Subpart B, Scheduling Records. Subpart B will reflect that the records scheduling process is virtually identical for permanent and temporary records. Subpart B will contain procedures for obtaining disposition authority for both permanent and temporary records now found in §§ 1228.30 through 1228.72. Section 1228.28 will require agencies to specify on proposed schedules all access restrictions on permanent records, and § 1228.30 will require agencies to specify Privacy Act restrictions for temporary records.

Because of the wording of the current regulation some agencies mistakenly believed that a comprehensive schedule had to be developed as a single project. Sections 1228.20 through 1228.24 will make clear that comprehensive schedules may be developed incrementally.

Section 1228.22 was redesignated subpart C and updated to conform with the recently revised General Records Schedules.

Subpart D will contain implementation procedures now found in §§ 1228.20, 1228.34, and §§ 1228.66 through 1228.74. Many agencies issue instructions based on NARA regulations and procedures. Upon receipt of copies of such issuances, NARA has frequently found discrepancies that could cause problems in scheduling records or retiring them to Federal records centers. Section 1228.50 has been revised to require NARA clearance of such instructions before issuance. A requirement that agencies disseminate additions and changes to the General Records Schedules within six months has also been added to § 1228.50.

At times, agencies have loaned Federal records to non-Federal organizations for exhibit or research purposes. As NARA is concerned about the preservation of permanent and potentially permanent (unscheduled) records, subparts E through J have been redesignated as subparts F through K and a new subpart E has been added to control the temporary loan of such records.

Minor changes have been made to § 1228.92 concerning disposal methods for records on nitrocellulose base film that constitute a continuing menace to human life or health or to property. Salvage of silver content is required only if the silver content and market value of silver warrant salvage. Alternatively, the film may be buried in approved landfills.

Finally, § 1228.152 was revised to clarify that all SF 115s are to be submitted to NARA's Records Appraisal and Disposition (NIR) Division, even if the agency is requesting an exception for the transfer of unscheduled records to a Federal records center.

Other nonsubstantive changes have been made to §§ 1228.94, 1228.100, 1228.102, 1228.104, and 1228.136 to improve the clarity of those sections.

Derivation table

The following derivation table summarizes the changes being made in part 1228.

New section	Old section	Comments
1228.1	1228.1	Second sentence of introductory paragraph and paragraphs (a) through (d) are new.
1228.10	1228.10	Minor rewording.
1228.12	1228.12	Revised.
1228.20(a)	1228.30	No change.
1228.20(b)	1228.60	No change.
1228.22	1228.12	New third and fourth sentences of introductory paragraph add provision for incremental development of comprehensive schedule.
1228.22(a)		New.
1228.22(b)	1228.12(a)	Minor rewording.
1228.22(c)		New.
1228.22(d)	1228.12(b)	Additional information on retention periods is provided.
1228.22(e)	1228.12(c)	Minor rewording.
1228.22(f)	1228.12(d)	GAO approval is added.
1228.24(a)	1228.20(a)	Revised.
1228.24(b)	1228.20	Revised.
1228.24(b)(1)	1228.20(b)(1)	Revised.
1228.24(b)(2)	1228.20(b)(3)	Minor rewording.
1228.24(b)(3)	1228.20(b)(4)	Minor rewording.
1228.24(b)(4)	1228.20(b)(5)	Revised. Disposition of nonrecord material will be controlled in agency records disposition manual and will not be included on SF 115.
1228.24(c)	1228.20(c)	Minor rewording.
1228.26(a)		New.
1228.26(a)(1)	1228.20(b)	Only second sentence of current paragraph remains.
1228.26(a)(2)	1228.20(b)(6)	No change.
1228.26(b)	1228.20(d)	No change.
1228.26(c)	1228.20(c)	Last sentence is added to new section.
1228.28(a)		New.
1228.28(b)(1)		New.
1228.28(b)(2)		New.
1228.28(b)(3)		New.
1228.28(b)(4) through (b)(7).	1228.32(b)	No change. Elements are listed individually in proposed rule.
1228.28(b)(8)(i)	1228.32(c)	Additional guidance is provided.
1228.28(b)(8)(ii)	1228.32(d)	Minor rewording.
1228.28(c)	1228.34(a)	No change.
1228.28(c)(1)	1228.34(b)	Minor rewording.
1228.28(c)(2)	1228.34(c)	No change.
1228.30(a)		New.
1228.30(b)		New.
1228.30(c)	1228.34(d)	Minor rewording.
1228.30(d)	1228.64	Revised to allow concurrent submission to NARA and GAO.
1228.30(e)		New.
1228.32	1228.70	Minor rewording.
1228.40	1228.22, 1228.22(a)(1), 1228.22(a)(2).	Revised to cover only temporary records.
1228.42(a)	1228.22(a)(3)	Minor rewording.
1228.42(b)	1228.22(a)(4)	Minor rewording.
1228.42(c)	1228.22(a)(5)	No change.
1228.44	1228.22(b)	Updated to reflect the current GRS.
1228.46	1228.22(c)	Revised.
1228.50	1228.20(h) and 1228.66.	Revised.
1228.50(a)		New.
1228.50(a)(1)		New.
1228.50(a)(2)		New.
1228.50(a)(3)		New.
1228.50(a)(4)	1228.20, 1228.22(h), and 1228.66.	Combined provisions for sending directives and published schedules to NARA.
1228.50(b)		New.
1228.50(c)	1228.20(b)(6)	Added requirement to disseminate GRS changes within 6 months.
1228.50(d)	1228.22(h)	Contains only the first sentence of current paragraph (h).
1228.50(d)(1)	1228.22(g)(1)	No change.
1228.50(d)(2)	1228.22(g)(2)	No change.
1228.50(d)(3)	1228.22(g)(3)	No change.
1228.52	1228.68	No change.
1228.54	1228.72	Minor rewording.
1228.56	1228.34(e)	Subpart reference is updated.
1228.58(a)	1228.74(a)	Minor rewording.
1228.58(b)	1228.74(b)	Minor rewording. Privacy Act records are identified as a type of record requiring witnessed destruction.
1228.58(c)	1228.74(d)	Additional methods of destruction are added.
1228.60	1228.74(c)	Minor rewording.
1228.70		New.
1228.72		New.
1228.74		New.
1228.76		New.
1228.92(a)	1228.92(a)	Rewritten for improved clarity.
1228.92(b)	1228.92(b)	Rewritten for improved clarity.
1228.92(b)(1)	1228.92(b)(1)	Qualifies when agency must salvage silver.
1228.92(b)(2)	1228.92(b)(2)	Burning is no longer authorized.
1228.92(d)	1228.92(d)	Directions for burning are deleted.
1228.94	1228.94	Minor rewording.

New section	Old section	Comments
1228.100	1228.100	Minor rewording.
1228.102	1228.102	Penalty in 18 U.S.C. 2071 is stated.
1228.104	1228.104	Minor rewording.
1228.36	1228.36	Adds transfer of records between two components of the same Executive department as exception.
1228.152(a)(1)(i)	1228.152(a)(1)(i)	SF 115 must be submitted to NIR instead of to NARA's Office of Federal Records Centers (NC).

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Parts 1220 and 1228

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend Chapter XII of Title 36 of the Code of Federal Regulations as follows:

PART 1220—FEDERAL RECORDS; GENERAL

1. The authority citation for part 1220 is revised to read as follows:

Authority: 44 U.S.C. 2104(a) and Chapters 29 and 33.

2. Section 1220.14 is amended by removing the definition of "National Archives of the United States"; revising the definitions of "permanent record, " 'records schedule' or schedule' ", "series", and "unscheduled records"; and adding the new definitions in alphabetical order as follows:

§ 1220.14 General Definitions.

* * * * *

Agency (see "Executive agency" and "Federal agency").

Appraisal is the process by which the National Archives and Records Administration (NARA) determines the value and thus the final disposition of Federal records, making them either temporary or permanent.

Comprehensive schedule is a printed agency manual or directive containing descriptions of and disposition instructions for all documentary materials, record and nonrecord, created by a Federal agency or major component of an Executive department. Unless taken from the General Records Schedules (GRS) issued by NARA, the disposition instructions for agency records must be approved by NARA on one or more Standard Form(s) 115, Request for Records Dispostion Authority, prior to issuance by the agency. The disposition instructions for the nonrecord material is established by the agency and does not require NARA approval.

Contingent records are records whose final disposition is dependent on an action or event, such as sale of property or destruction of a facility, which will take place at some unspecified time in the future.

Disposition means the action taken with regard to records following their appraisal by NARA. 44 U.S.C. 2901(5) defines "records disposition" as any activity with respect to:

(a) Disposal of temporary records no longer needed for the conduct of business by destruction or donation to an eligible person or organization outside of Federal custody in accordance with the requirements of part 1228 of this chapter.

(b) Transfer of records to Federal agency storage facilities or records centers;

(c) Transfer to the National Archives of the United States of records determined to have sufficient historical or other value to warrant continued preservation; or

(d) Transfer of records from one Federal agency to any other Federal agency in accordance with the requirements of part 1228 of this chapter.

Documentary materials is a collective term for records and nonrecord materials that refers to all media on which information is recorded, regardless of the nature of the medium or the method or circumstances of recording.

* * * * *

Information system is the organized collection, processing, transmission, dissemination, retention, and storage of information in accordance with defined procedures. It is also called a "record system" or simply a "system." The term is most often used in relation to electronic records and involves input or source documents, records on electronic media, and output records.

* * * * *

National Archives means those records that have been determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the Federal Government, and that have been accepted for deposit in the Archivist's custody. Also called National Archives of the United States (44 U.S.C. 2901(11)).

Nonrecord materials are those Federally owned informational materials that do not meet the statutory definition of records (44 U.S.C. 3301) or that have been excluded from coverage by the definition. Excluded materials are extra copies of documents kept only for reference, stocks of publications and processed documents, and library or museum materials intended solely for reference or exhibit.

Permanent record means any Federal record that has been determined by NARA to have sufficient value to warrant its preservation in the National Archives. Permanent records include all records accessioned by NARA's Office of the National Archives and later increments of the same records, and those for which the disposition is "permanent" on SF 115s, Request for Records Disposition Authority, approved by NARA on or after May 14, 1973.

Records include all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because or the informational value of the data in them (44 U.S.C. 3301).

* * * * *

Records schedule or "schedule" means:

(a) An SF 115, Request for Records Disposition Authority, that has been approved by NARA to authorize the disposition of Federal records;

(b) A General Records Schedule (GRS) issued by NARA; or

(c) A printed agency manual or directive containing the records descriptions and disposition instructions approved by NARA on one or more SFs 115 or issued by NARA in the GRS. (See also the definition "Comprehensive schedule".)

Series means file units or documents arranged according to a filing system or kept together because they relate to a particular subject or function, result from the same activity, document a specific kind of transaction, take a particular physical form, or have some other relationship arising out of their creation, receipt, or use, such as restrictions on access and use. Also called a records series.

* * * * *

Unscheduled records are records the final disposition of which has not been approved by NARA. Unscheduled records are those not disposable under the General Records Schedules; those that have not been included on a Standard Form 115, Request for Records Disposition Authority, approved by NARA; those described but not authorized for disposal on an SF 115 approved prior to May 14, 1973; and those described on an SF 115 but not approved by NARA (withdrawn, canceled, or disapproved).

PART 1228—DISPOSITION OF FEDERAL RECORDS

3. The authority citation for part 1228 continues to read as follows:

Authority: 44 U.S.C. 2101–2111, 2901–2909, 3101–3107, 3301–3314.

4. The Table of Contents for part 1228, subparts A through D are revised and new subpart E is added (current subparts E through J are redesignated as subparts F through K in amendatory instruction 10) to read as follows:

* * * * *

Subpart A—Records Disposition Programs

Sec.
1228.10 Authority.
1228.12 Basic elements of disposition programs.

Subpart B—Scheduling Records

1228.20 Authorities.
1228.22 Developing records schedules.
1228.24 Formulation of agency records schedules.
1228.26 Request for records disposition authority.
1228.28 Scheduling permanent records.
1228.30 Scheduling temporary records.
1228.32 Request to change disposition authority.

Subpart C—General Records Schedules

1228.40 Authority.
1228.42 Applicability.
1228.44 Current schedules.
1228.46 Availability.

Subpart D—Implementing Schedules

1228.50 Application of schedules.
1228.52 Withdrawal of disposal authority.
1228.54 Temporary extension of retention periods.
1228.56 Transfer of permanent records.
1228.58 Destruction of temporary records.
1228.60 Donation of temporary records.

Subpart E—Loan of Permanent and Unscheduled Records

1228.70 Authority.
1228.72 Approval.
1228.74 Agency request.
1228.76 NARA action on request.

* * * * *

5. Section 1228.1 is revised to read as follows:

§ 1228.1 Scope of part.

This part sets policies and establishes standards, procedures, and techniques for the disposition of all Federal records in accordance with 44 U.S.C. Chapters 21, 29, 31, and 33. The disposition of documentary materials created or acquired by a Federal agency, regardless of physical form or characteristics, is controlled by this part if any of the following conditions are met:

(a) The materials are created or received in the course of business and contain information related to the organization, functions, policies, decisions, procedures, operations, or other official activities of the agency. Also included is documentation of oral exchanges such as telephone conversations and meetings during which policy was discussed or formulated or other significant activities of the agency were planned, discussed, or transacted.

(b) The creation, retention, or disposition of the materials is mandated by statute or agency or other Federal regulations, directives, policies, or procedures.

(c) The materials are controlled, maintained, preserved, processed, filed, or otherwise handled following established agency procedures for records.

(d) The material contains unique information, such as substantive annotations, including drafts, transmittal sheets, and final documents or other materials circulated or made available to employees other than the creator for official purposes, such as approval, comment, action, recommendation, follow-up, or to keep agency staff informed regarding agency business.

6. Subpart A of part 1228 is revised to read as follows:

Subpart A—Records Disposition Programs

§ 1228.10 Authority.

The head of each agency (in accordance with 44 U.S.C. 2904, 3102, and 3301) is required to establish and maintain a records disposition program to ensure efficient, prompt, and orderly reduction in the quantity of records and to provide for the proper maintenance of records designated as permanent by NARA.

§ 1228.12 Basic elements of disposition programs.

The primary steps in managing a records disposition program are given below. Details of each element are contained in the NARA records management handbook, Disposition of Federal Records (NSN 7610–01–055–8704).

(a) Issue a program directive assigning authorities and responsibilities for records disposition activities in the agency and keep that directive up-to-date.

(b) Develop, implement, and maintain an accurate, current, and comprehensive records schedule.

(c) Train all agency personnel taking part in the agency's records disposition activities.

(d) Publicize the program to make all agency employees aware of their records disposition responsibilities.

(e) Evaluate the results of the program to ensure adequacy, effectiveness, and efficiency.

7. Subpart B of part 1228 is revised to read as follows:

Subpart B—Scheduling Records

§ 1228.20 Authorities.

(a) The head of each agency shall direct the creation and preservation of records containing accurate and complete documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency (44 U.S.C. 3101). The National Archives and Records Administration shall establish standards for the retention of those records having continuing value, and assist Federal agencies in applying the standards to records in their custody (44 U.S.C. 2905).

(b) No Federal records shall be destroyed or otherwise alienated from the Government except in accordance with procedures described in this part 1228 (44 U.S.C. 3314).

§ 1228.22 Developing records schedules.

The primary steps in developing agency records schedules are given below. Details in each step are contained in the NARA records management handbook, Disposition of Federal Records (NSN 7610–01–055–8704). Ultimately, all records of an agency must be scheduled, but they

need not all be scheduled at the same time. An agency may schedule the records of one function, program or organizational element at a time.

(a) Determine the functions and activities documented by the records to be scheduled.

(b) Prepare an inventory of the records including a description of their medium, location, volume, inclusive dates, informational content and use.

(c) Evaluate the period of time the agency needs each records series or system by reference to its uses and value to agency operations or legal obligations.

(d) Based on agency need, formulate specific recommended disposition instructions for each records series or each part of an automated information system, including file breaks, retention periods for temporary records, transfer periods for permanent records, and instructions for the retirement of records to Federal records centers, when appropriate. Recommended retention periods take into account the rights and interests of the Government and the rights and interests of those directly affected by agency actions.

(e) Assemble into a draft schedule the descriptions and recommended disposition instructions for logical blocks of records, i.e., entire agency, organizational component, or functional area.

(f) Obtain approval of the records schedules from NARA (and from the General Accounting Office, when so required under Title 8 of the GAO "Policy and Procedures Manual for the Guidance of Federal Agencies").

§ 1228.24 Formulation of agency records schedules.

(a) *General.* Agency records schedules approved by the Archivist of the United States specify the disposition for agency records. Records of continuing (permanent) value will be scheduled for retention and immediate or eventual transfer to the legal custody of NARA. All other records will be scheduled for destruction or donation after a specific period of time based on administrative, fiscal, and legal values.

(b) *Characteristics of schedules.* Though records disposition authority may be requested from NARA on a program-by-program, function-by-function, or office-by-office basis, all agency records must be scheduled. Schedules must follow the guidelines provided below:

(1) Schedules shall identify and describe clearly each series or system and shall contain disposition instructions that can be readily applied. (Additional information is required for permanent records as specified in § 1228.28(b).) Schedules must be prepared so that each office will have standing instructions detailing the disposal, transfer, or retention of records.

(2) SF 115s shall include only new records not covered by the General Records Schedules (GRS) (see subpart C), deviations from the GRS (see § 1228.42), or previously scheduled records requiring changes in retention periods or substantive changes in description.

(3) All schedules shall take into account the physical organization of records or the filing system so that disposal or transfer can be handled in blocks.

(4) The disposition of nonrecord materials is controlled by instructions in the agency's printed or published records disposition manual. These instructions do not require NARA approval. Such items shall not be included on SF 115s. Nonrecord materials, such as extra copies of documents preserved solely for reference, and stocks of processed documents, and personal materials shall be maintained separately from official agency files to aid in records disposition.

(c) *Provisions of schedules.* Records schedules shall provide for:

(1) The destruction of records that have served their statutory, fiscal, or administrative uses and no longer have sufficient value to justify further retention. Procedures for obtaining disposal authorizations are prescribed in § 1228.30;

(2) The removal to a Federal records center (or to an agency records center approved under subpart K) of records not eligible for immediate destruction or other disposition but which are no longer needed in office space. These records are maintained by the records center until they are eligible for further disposition action;

(3) The retention of the minimum volume of current records in office space consistent with effective and efficient operations; and

(4) The identification of records of permanent value in accordance with § 1228.28, and the establishment of cutoff periods and dates when such records will be transferred to the legal custody of NARA.

§ 1228.26 Request for records disposition authority.

(a) *Submission.* Requests for records disposition authority shall be initiated by Federal agencies by submitting Standard Form 115 Request for Records Disposition Authority, to NARA (NIR). An SF 115 is used for requesting authority to schedule (or establish the disposition for) permanent and temporary records, either on a recurring or one-time basis.

(1) New Federal agencies shall apply General Records Schedules to eligible records and shall submit to NARA SF 115s covering all remaining records within 2 years of their establishment.

(2) Agencies shall submit to NARA schedules for the records of new programs and of programs that are reorganized or otherwise changed in a way that results in the creation of new or different records within 1 year of the implementation of the change.

(b) *Certification.* The signature of the authorized agency representative on the SF 115 shall constitute certification that the records recommended for disposal do not or will not have sufficient administrative, legal, or fiscal value to the agency to warrant retention beyond the expiration of the specified period and that records described as having permanent value will be transferred to the National Archives upon expiration of the stated period.

(c) *Disapproval of requests for disposition authority.* Requests for records disposition authority may be returned to the agency if the SF 115 is improperly prepared. The agency shall make the necessary corrections and resubmit the form to NARA (NIR). NARA may disapprove the disposition request for an item if, after appraisal of the records, NARA determines that the proposed disposition is not consistent with the value of the records. In such cases, NARA will notify the agency in writing.

§ 1228.28 Scheduling permanent records.

(a) *Initiation.* Federal agencies propose permanent retention of records in accordance with guidelines contained in the NARA records management handbook' Disposition of Federal Records (NSN 7610-01-55-8704).

(b) *Requirements.* Each item proposed for permanent retention on an SF 115 shall include the following:

(1) Records series title used by agency personnel to identify the records;

(2) Complete description of the records including physical type and informational contents;

(3) Inclusive dates;

(4) An arrangement statement;

(5) Statement on restrictions on access which NARA should impose in conformity with the Freedom of Information Act;

(6) An estimate of the volume of records accumulated annually if the records are current and continuing;

(7) The total volume to date; and

(8) Disposition instructions, developed using the following guidelines:

(i) If the records series or system is current and continuing, the SF 115 will include a disposition instruction specifying the period of time after which the records will be transferred to the National Archives, normally within 30 years for paper records, 5–10 years for audiovisual or microform records, and as soon as the records become inactive or the agency cannot meet the maintenance requirements found in § 1228.188 of this part for electronic records.

(ii) If the records series or system is nonrecurring, i.e., no additional records will be created or acquired, the agency may propose either immediate or future transfer to the National Archives.

(c) *Determination.* NARA will determine whether or not records are of permanent value and when the transfer of the permanent records will take place.

(1) If NARA determines that records are not permanent, it will notify the agency and negotiate an appropriate disposition. The disposition instruction on the SF 115 will be modified prior to NARA approval.

(2) If NARA determines that records are permanent, but that the transfer instructi ns are not appropriate, it will negotiate appropriate transfer terms with the agency. The disposition instruction on the SF 115 will be modified prior to NARA approval.

§ 1228.30 Scheduling temporary records.

(a) *Initiation.* Federal agencies request authority to dispose of records, either immediately or on a recurring basis. Requests for immediate disposal are limited to records already in existence which no longer accumulate. For recurring records, approved schedules provide continuing authority to destroy the records. The retention periods approved by NARA are mandatory, and the agency shall dispose of the records after expiration of the retention period, except as provided in § 1228.54.

(b) *Requirements.* Each item on an SF 115 proposed for eventual destruction shall include the following:

(1) Records series title used by agency personnel to identify the records;

(2) Description of the records including physical type and informational contents;

(3) Statement of any Privacy Act restrictions on the records; and

(4) Disposition instructions, developed using the following guidelines:

(i) If the records series or system is current and continuing, the SF 115 will include a disposition instruction specifying the period of time after which the records will be destroyed.

(ii) If the records series or system is nonrecurring, i.e., no additional records will be created or acquired, the agency may propose either immediate destruction or destruction on a future date.

(c) Determination. NARA may determine that records proposed as temporary merit permanent retention and transfer to the National Archives. In such cases, NARA arranges with the agency to change the disposition instruction prior to approval of the SF 115.

(d) *General Accounting Office concurrence.* Each Federal agency shall obtain the approval of the Comptroller General for the disposal of program records less than 3 years old and for certain classes of records relating to claims and demands by or against the Government, and to accounts in which the Government is concerned in accordance with the GAO "Policy and Procedures Manual for Guidance of Federal Agencies", Title 8—Records Management (44 U.S.C. 3309). This approval must be obtained before the approval of the disposal request by NARA, but the request may be submitted concurrently to GAO and NARA.

(e) *Withdrawn items.* Agencies may request that items listed on the SF 115 be withdrawn in order to aid in NARA's processing (appraisal) of the remaining items on the schedule.

(1) If, during the course of the appraisal process, NARA determines that records described by an item(s) on the proposed schedule do not exist or are not arranged as stated on the SF 115, NARA may request the agency to withdraw the item(s) from consideration, if the agency is unable to offer sufficient clarification.

(2) If NARA and the agency cannot agree on the retention period for an item(s), the items(s) may be withdrawn. In these cases, the agency will submit an SF 115 with a revised proposal for disposition within 6 months of the date of the approval of the original SF 115.

§ 1228.32 Request to change disposition authority.

Agencies desiring to change the approved disposition of a series or system of records shall submit an SF 115. Disposition authorities contained in approved SF 115s are automatically superseded by approval of a later SF 115 applicable to the same records unless the later SF 115 specified an effective date. Agencies submitting revised schedules shall indicate on the SF 115 the relevant schedule and item numbers to be superseded, the citation to the current printed records disposition schedule, if any, and/or the General Records Schedules and item numbers which cover the records.

8. Subpart C of part 1228 is revised to read as follows:

Subpart C—General Records Schedules

§ 1228.40 Authority.

The Archivist of the United States shall issue schedules authorizing disposal, after specified periods of time, of records common to several or all agencies after determining that the records lack value for continued retention by the U.S. Government. General Records Schedules constitute authority to destroy records described therein after expiration of the stated retention period. Application of the disposition instructions in these schedules is mandatory (44 U.S.C. 3303a).

§ 1228.42 Applicability.

(a) New items or changes in the disposition of GRS records supersede approved agency schedules for the same series or system of records, unless the agency schedule provides for a shorter retention period, or unless NARA indicates that the GRS standard must be applied without exception. Agencies shall not request authority to apply GRS authorizations (see § 1228.24(b)(2)).

(b) Agencies may request exceptions to disposition instructions in the GRS by submitting an SF 115 in accordance with § 1228.30 accompanied by a written justification explaining why the agency needs the records for a different period of time from other agencies.

(c) Provisions of the General Records Schedules may be applied to records in the custody of the National Archives at NARA's discretion subject to the provisions of § 1228.200.

§ 1228.44 Current schedules.

The following General Records Schedules governing the disposition of records common to several or all agencies were developed by the National Archives and Records Administration after consultation with other appropriate agencies. They have been approved by the Archivist of the United States.

Schedule Number and Type of Records Governed

1. Civilian Personnel Records.
2. Payrolling and Pay Administration Records.
3. Procurement, Supply and Grant Records.
4. Property Disposal Records.

5. Budget Preparation, Presentation, and Apportionment Records.
6. Accountable Officers' Accounts Records.
7. Expenditure Accounting Records.
8. Stores, Plant, and Cost Accounting Records.
9. Travel and Transportation Records.
10. Motor Vehicle Maintenance and Operation Records.
11. Space and Maintenance Records.
12. Communications Records.
13. Printing, Binding, Duplication, and Distribution Records.
14. Information Services Records.
15. Housing Records.
16. Administrative Management Records.
17. Cartographic, Aerial Photographic, Architectural, and Engineering Records.
18. Security and protective Services Records.
19. Research and Development Records: Rescinded.
20. Electronic Records.
21. Audiovisual Records.
22. Inspector General Records.
23. Records Common to Most Offices Within Agencies.

§ 1228.46 Availability.

The GRS and instructions for their use are available from NARA (NI). The Archivist of the United States distributes new schedules and schedule revisions under sequentially numbered GRS transmittals.

9. Subpart D of part 1228 is revised to read as follows:

SUBPART D—IMPLEMENTING SCHEDULES

§ 1228.50. Application of schedules.

The application of approved schedules is mandatory (44 U.S.C. 3303a). The Archivist of the United States will determine whether or not records may be destroyed or transferred to the National Archives. If the Archivist approves the request for disposition authority, NARA will notify the agency by returning one copy of the completed SF 115. This shall constitute mandatory authority for the final disposition of the records (for withdrawal of disposal authority or the extension of retention periods, see §§ 1228.52 and 1228.54). The authorized destruction shall be accomplished as prescribed in § 1228.58. The head of each Federal agency shall direct the application of records schedules to ensure the agency has recorded information necessary to conduct Government business, avoid waste, and preserve permanent records for transfer to the National Archives. The agency head shall take the following steps to ensure proper dissemination and application of approved schedules:

(a) Issue an agency directive incorporating the disposition authorities approved by NARA, i.e., SF 115s (except for one-time authorities covering nonrecurring records) and the General Records Schedules. Also include nonrecord materials with disposition instructions developed by the agency. Once all records and nonrecord materials are included, this document is the agency's comprehensive schedule. Agencies may also issue other directives containing instructions relating to agency records disposition procedures.

(1) Published schedules do not include nonrecurring records for which NARA has granted authority for immediate disposal or transfer to the National Archives. They do include general instructions for retirement of records to the Federal records centers, transfer of records to the National Archives, and other records disposition procedures.

(2) Comprehensive schedules are formally published manuals or directives that provide for the disposition of all recurring records and nonrecord materials created by an agency. These schedules must cite the GRS or SF 115 and item numbers that provide the legal disposition authority for items covering record material.

(3) Prior to issuance, agencies shall submit final drafts of directives or other issuances containing approved schedules, instructions for use of the Federal records centers, transfer of records to the National Archives, or other matters covered by NARA procedures or regulations to the National Archives and Records Administration (NI) for clearance.

(4) Agencies shall forward to the National Archives and Records Administration (NIR) three copies of each final directive or other issuance relating to records disposition and 20 copies of all published records schedules (printed agency manuals) and changes.

(b) Establish internal training programs to acquaint appropriate personnel with the requirements and procedures of the records disposition program.

(c) Apply the approved records disposition schedules to the agency's records.

(1) Records described by items marked "disposition not approved" or "withdrawn" may not be destroyed until a specific disposition has been approved by NARA.

(2) Disposition authorities for items on approved SF 115s that specify an organizational component of the department or agency as the creator or custodian of the records may be applied to the same records after internal reorganization, but only if the nature, content, and functional importance of the records remain the same. Authority approved for items described in a functional format may be applied to any organizational component within the department or agency that is responsible for the relevant function.

(3) Disposition authorities approved for one department or independent agency may not be applied by another. Departments or agencies that acquire records from another department or agency, and/or continue creating the same series of records previously created by another department or agency through interagency reorganization must submit an SF 115 to NARA for disposition authorization for the records within one year of the reorganization.

(d) Review approved schedules, and, if necessary, update them annually. Additions and changes to the GRS shall be incorporated or otherwise disseminated within 6 months of issuance from NARA.

§ 1228.52 Withdrawal of disposal authority.

In an emergency or in the interest of efficiency of Government operations, NARA will withdraw disposal authorizations in approved disposal schedules (44 U.S.C. 2909). This withdrawal may apply to particular items on schedules submitted by agencies or may apply to all existing authorizations for the disposal of a specified type of record obtained by any or all agencies of the Government. If the withdrawal is applicable to only one agency, that agency will be notified of this action by letter signed by the Archivist; if applicable to more than one agency, notification may be by NARA bulletin issued and signed by the Archivist.

§ 1228.54 Temporary extension of retention periods.

(a) Approved agency records schedules and the General Records Schedules are mandatory (44 U.S.C. 3303a). Records approved for destruction shall not be maintained longer without the prior written approval of the National Archives and Records Administration (NIR).

(b) Upon submission of adequate justification, NARA may authorize a Federal agency to extend the retention period of a series or system of records (44 U.S.C. 2909). These extensions of retention periods will be granted for records which are required to conduct Government operations because of special circumstances which alter the normal administrative, legal, or fiscal value of the records.

(c) The head of a Federal agency may request approval of a temporary

extension of a retention period by sending a letter to NARA (NIR), Washington, DC 20408. The request shall include:

(1) A concise description of the records for which the extension is requested.

(2) A complete citation of the specific provisions of the agency records schedule or the General Records Schedule currently governing disposition of the records;

(3) A statement of the estimated period of time that the records will be required; and

(4) A statement of the current and proposed physical location of the records including information on whether the records have been or will be transferred to one or more Federal records centers.

(d) Approval of a request for extension of retention periods may apply to records in the custody of one Federal agency or records common to several or all Federal agencies. If approval of a request is applicable to records in the custody of one agency, that agency will be notified by letter. If approval is applicable to records common to several agencies, notification may be made by NARA bulletin.

(e) Upon approval of a request for a change in retention periods applicable to records that have been or will be transferred to one or more Federal records centers, centers will be notified of the change and agencies will be furnished a copy of the notification. Agencies shall forward to the National Archives and Records Administration (NIR) 20 copies of all formally issued instructions which extend retention periods.

(f) Upon expiration of an approved extension of retention period, NARA will notify all affected agencies to apply normal retention requirements.

§ 1228.56 Transfer of permanent records.

All records scheduled as permanent shall be transferred to the National Archives after the period specified on the SF 115 in accordance with procedures specified under subpart J.

§ 1228.58 Destruction of temporary records.

(a) *Authority.* Federal agencies are required to follow regulations issued by the Archivist of the United States governing the methods of destroying records (44 U.S.C. 3302). Only the methods described in this section shall be used.

(b) *Sale or salvage.* Paper records to be disposed of normally must be sold as wastepaper. If the records are restricted because they are national security classified or exempted from disclosure by statute, including the Privacy Act, or regulation, the wastepaper contractor must be required to pulp, macerate, shred, or otherwise definitively destroy the information contained in the records, and their destruction must be witnessed either by a Federal employee or, if authorized by the agency that created the records, by a contractor employee. The contract for sale must prohibit the resale of all other paper records for use as records or documents. Records other than paper records (audio, visual, and data tapes, disks, and diskettes) may be salvaged and sold in the same manner and under the same conditions as paper records. All sales must be in accordance with the established procedures for the sale of surplus personal property. (See 41 CFR part 101–45, Sale, Abandonment, or Destruction of Personal Property.)

(c) *Destruction.* If the records cannot be sold advantageously or otherwise salvaged, the records may be destroyed by burning, pulping, shredding, macerating, or other suitable means.

§ 1228.60 Donation of temporary records.

(a) When the public interest will be served, a Federal agency may propose the transfer of records eligible for disposal to an appropriate person, organization, institution, corporation, or government (including a foreign government) that has requested them. Records will not be transferred without prior written approval of NARA.

(b) The head of a Federal agency shall request the approval of such a transfer by sending a letter to NARA (NIR), Washington, DC 20408. The request shall include:

(1) The name of the department or agency, and subdivisions thereof, having custody of the records;

(2) The name and address of the proposed recipient of the records;

(3) A list containing:

(i) An identification by series or system of the records to be transferred,

(ii) The inclusive dates of the records,

(iii) The NARA disposition job (SF 115) or GRS and item numbers that authorize disposal of the records.

(4) A statement providing evidence:

(i) That the proposed transfer is in the best interests of the Government,

(ii) That the proposed recipient agrees not to sell the records as records or documents, and

(iii) That the transfer will be made without cost to the U.S. Government;

(5) A certification that:

(i) The records contain no information the disclosure of which is prohibited by law or contrary to the public interest, and/or

(ii) That records proposed for transfer to a person or commercial business are directly pertinent to the custody or operations of properties acquired from the Government, and/or

(iii) That a foreign government desiring the records has an official interest in them.

(c) NARA will consider each request and determine whether the donation is in the public interest. Upon approval NARA will notify the requesting agency in writing. If NARA determines such a proposed donation is contrary to the public interest, the request will be denied and the agency will be notified that the records must be destroyed in accordance with the appropriate disposal authority.

Subparts F Through K—[Redesignated From Subparts E Through J]

10. In part 1228, subparts E through J are redesignated as subparts F through K and a new subpart E is added to read as follows:

Subpart E—Loan of Permanent and Unscheduled Records

§ 1228.70 Authority.

The Archivist is required to establish standards for the selective retention of records of continuing value (44 U.S.C. 2905).

§ 1228.72 Approval.

No permanent or unscheduled records shall be loaned to non-Federal recipients without prior written approval from NARA. This authorization is not required for temporary loan of permanent and unscheduled records between Federal agencies.

§ 1228.74 Agency request.

The head of a Federal agency shall request approval for the loan by sending a letter to NARA (NIR), Washington, DC 20408. The request will include:

(a) The name of the department or agency and subdivisions thereof, having custody of the records;

(b) The name and address of the proposed recipient of the records;

(c) A list containing:

(1) An identification by series or system of the records to be loaned,

(2) The inclusive dates of each series, and

(3) The NARA disposition job (SF 115) and item numbers covering the records, if any;

(d) A statement of the purpose and duration of the loan;

(e) A statement specifying any restrictions on the use of the records

and how these restrictions will be administered by the donee; and

(f) A certification that the records will be stored according to the environmental specifications for archival records.

§ 1228.76 NARA action on request.

The Archivist of the United States shall be a signatory on all formally executed loan agreements for permanent and unscheduled records. Such agreements shall not be implemented until the Archivist has signed. NARA will deny the request if the records should be transferred to the National Archives or if the loan would endanger the records or otherwise contravene the regulations in 36 CFR chapter XII, subchapter B. If the request is denied, the Archivist will notify the agency in writing and provide instructions for the disposition of the records.

11. In newly redesignated subpart F, § 1228.92, paragraphs (a), (b), and (d) are revised to read as follows:

§ 1228.92 Menaces to human life or health or to property.

(a) Agencies may destroy records that constitute a continuing menace to human health or life or to property (44 U.S.C. 3310). When such records are identified, the agency head shall notify NARA (NIR), specifying the nature of the records, their location and quantity, and the nature of the menace. If NARA concurs in the determination, the Archivist will direct the immediate destruction of the records or other appropriate means of destroying the recorded information. However, if the records are still or motion picture film on nitrocellulose base that has deteriorated to the extent described in paragraph (b) of this section, the head of the agency may follow the procedure therein provided.

(b) Whenever any radar scope, aerial, or other still or motion picture film on nitrocellulose base has deteriorated to the extent that it is soft and sticky, is emitting a noxious odor, contains gas bubbles, or has retrograded into acrid powder, and the head of the agency having custody of it shall determine that it constitutes a menace to human health or life or to property, and the agency shall without prior authorization of the Archivist:

(1) Arrange for its destruction in a manner that will salvage its silver content if the silver content is of sufficient quantity and market value per troy ounce to warrant such salvage;

(2) Authorize burial in approved landfills, in the event the quantity is not sufficiently large to justify the salvaging of its silver content; or

(3) Effect other appropriate methods in the event that the methods provided in paragraph (b)(1) or (2) of this section are not feasible.

* * * * *

(d) Within 30 days after the destruction of the film as provided in this section, the head of the agency who directed its destruction shall submit a written statement to NARA (NIR), Washington DC 20408, describing the film and showing when, where, and how the destruction was accomplished.

* * * * *

12. In newly redesignated subpart F, § 1228.94 is revised to read as follows:

§ 1228.94 State of war or threatened war.

(a) Destruction of records outside the territorial limits of the continental United States is authorized whenever, during a state of war between the United States and any other nation or when hostile action by a foreign power appears imminent, the head of the agency that has custody of the records determines that their retention would be prejudicial to the interest of the United States, or that they occupy space urgently needed for military purposes and are without sufficient administrative, legal, research, or other value to warrant their continued preservation (44 U.S.C. 3311).

(b) Within 6 months after the destruction of any records under this authorization, a written statement describing the character of the records and showing when and where the disposal was accomplished shall be submitted to NARA (NIR) by the agency official who directed the disposal.

13. Newly redesignated subpart G of part 1228 is retitled to read as follows:

Subpart G—Damage to, Alienation, and Unauthorized Destruction of Records

14. In newly redesignated subpart G, §§ 1228.100 and 1228.102 are revised to read as follows:

§ 1228.100 Responsibilities.

(a) The Archivist of the United States and the heads of Federal agencies are responsible for preventing the alienation or unauthorized destruction of records, including all forms of mutilation. Records may not be removed from Federal custody or destroyed without regard to the provisions of agency records schedules (SF 115) approved by NARA or the General Records Schedules issued by NARA (44 U.S.C. 2905, 3106, and 3303a).

(b) The heads of Federal agencies are responsible for ensuring that all employees are aware of the provisions of the law relating to unauthorized destruction, alienation, or mutilation of records, and should direct that any such action be reported to them.

§ 1228.102 Criminal penalties.

The maximum penalty for the willful and unlawful destruction, damage, or alienation of Federal records is a $2,000 fine, 3 years in prison, or both (18 U.S.C. 2071).

15. In newly redesignated subpart G, § 1228.104 is amended by revising the introductory text in paragraph (a) and paragraph (a)(4) to read as follows:

§ 1228.104 Reporting.

(a) The head of a Federal agency shall report any unlawful removal, defacing, alteration, or destruction of records in the custody of that agency to NARA (NIR) Washington, DC 20408. The report shall include:

* * * * *

(4) A statement of the safeguards established to prevent further loss of documentation.

* * * * *

16. In newly redesignated subpart H, § 1228.124, the word "and" is added to the end of paragraph (d), paragraph (f) is removed, and paragraph (e) is revised to read as follows:

§ 1228.124 Agency request.

* * * * *

(e) A justification for the transfer including an explanation of why it is in the best interests of the Government.

17. In newly redesignated subpart H, § 1228.136 is revised to read as follows:

§ 1228.136 Exceptions.

Prior written approval of NARA is not required when:

(a) Records are transferred to the Federal records centers or the National Archives in accordance with subparts I and J.

(b) Records are loaned for official use.

(c) The transfer of records or functions or both is required by statute, Executive Order, Presidential reorganization plan, or Treaty, or by specific determinations made thereunder.

(d) The records are transferred between two components of the same Executive department.

(e) Records accessioned by the National Archives, later found to lack sufficient value for continued retention by the National Archives are governed exclusively for further disposition in accordance with § 1228.200.

18. In newly redesignated subpart I, § 1228.152, paragraph (a)(1)(i) is revised to read as follows:

§ 1228.152 Procedures for transfers to Federal records centers.

* * * * *

(a) * * *

(l) * * *

(i) Requests for exceptions for unscheduled records will be considered only if an SF 115 has been submitted and accepted in accordance with the provisions of subpart C. The request must include information on the volume of the records and the anticipated reference activity.

* * * * *

Dated: November 9, 1989.

Don W. Wilson,

Archivist of the United States

[FR Doc. 89-29238 Filed 12-15-89; 8:45 am]

BILLING CODE 7515-01-M

Notices

Federal Register
Vol. 54, No. 241
Monday, December 18, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 89-012N]

Privacy Act of 1974; Systems of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed new system of records.

SUMMARY: Notice is hereby given that USDA proposes to create a new Privacy Act system of records, USDA/FSIS-2, entitled "Common On-Line Reference for Establishments (CORE)."

EFFECTIVE DATE: This system shall become effective without further notice on February 16, 1990, unless modified by a subsequent notice to incorporate public comments. Written comments must be received by the contact person listed below on or before January 17, 1990.

ADDRESS: Interested persons may submit written comments to Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Catherine DeRoever, Director, Executive Secretariat, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Telephone (202) 447-9150.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, USDA proposes to add a new system of records, USDA/FSIS—2, "Common On-Line Reference for Establishments (CORE)." This system of records is necessary to enable the Agency to implement an automated information system that will include personal data on persons "responsibly connected" with an applicant for Federal meat and poultry inspection, as well as certain Agency personnel. The data will be used to improve communications and to support the Agency's Compliance Program. "Responsibly connected" individuals are all owners, partners, officers, directors, holders or owners of 10 per centum or more of voting stock of an applicant, and persons employed in managerial or executive capacities by the applicant.

A "Reporting on New System," required by 5 U.S.C. 552a(r) was furnished to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget on December 7, 1989.

Done at Washington DC, on December 12, 1989.

Jack C. Parnell,
Acting Secretary.

USDA/FSIS—2

SYSTEM NAME:

Common On-Line Reference for Establishments (CORE), USDA/FSIS.

SYSTEM LOCATION:

Food Safety and Inspection Service, USDA, 14th and Independence Avenue, SW., Washington, DC 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals responsibly connected with the applicant for Federal meat, poultry, or import inspection: All owners, partners, officers, directors, holders or owners of 10 per centum or more of voting stock, and employees in a managerial or executive capacity in the business; regional, area, and circuit personnel of Meat and Poultry Inspection Operations; Import Inspection Office personnel of International Programs; FSIS headquarters personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of: Names and addresses of applicants for Federal meat, poultry or import inspection and descriptive information about their business establishments (plants). The system includes the name, title, social security number, date of birth, place of birth and stock ownership (if 10 per centum or more) of all persons listed as responsibly connected with the applicant. It also includes types of operations, slaughter and processing categories, export restrictions, other names under which business will be conducted, plant types, numbers of authorized inspectors, dates of grants of inspection, types of inspection, and import information. In addition, the system contains mail management data necessary to mail USDA literature to non-establishment organizations (FSIS headquarters and field personnel) and to provide for the production of mailing labels and publication of the Meat and Poultry Inspection Directory.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

21 U.S.C. 451 *et seq.*, and 601 *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(2) In the event that material in this system indicates a violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be disclosed to the appropriate Agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order, issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer disks, magnetic tape, FSIS Form 5200-2, "Application for Federal Meat Poultry, or Import Inspection" and in computer printouts.

RETRIEVABILITY:

Records are arranged by establishment number and alphabetically by name of applicant. Records are also retrievable by names of persons responsibly connected with

the applicant. Establishment data in the computer are indexed by establishment number, Region, Area, and circuit; export data by country; personnel data by Region/Area/circuit; mail data by access code, literature code, or recipient code.

SAFEGUARDS:

Records are maintained in password-protected minicomputers, microcomputers, magnetic tape or locked file cabinets with attendants on duty during normal operating hours. Offices are locked after normal operating hours.

RETENTION AND DISPOSAL:

Active records are maintained indefinitely. Computer records for withdrawn plants are retained for 3 years. Computer printouts are destroyed after use.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Systems Development and Support Section, FSIS, Room 4906, South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250.

NOTIFICATION PROCEDURE:

A request for information should be addressed to the FSIS Privacy Act Coordinator, 14th Street and Independence Avenue, SW., Washington, DC 20250.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should submit a written request to the Privacy Act Coordinator at the above address.

CONTESTING RECORD PROCEDURES:

Same as records access procedures.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individuals to whom the records pertain.

[FR Doc. 89-29363 Filed 12-15-89; 8:45 am]

BILLING CODE 3410-37-M

Animal and Plant Health Inspection Service

[Docket No. 89-198]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that six applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products..

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment), in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
89-290-01	Auburn University	10-17-89	*Xanthomonas campestris* pv. *campestris* genetically engineered to contain a gene to confer bioluminescence as a marker.	Alabama.
89-293-01	Monsanto Agricultural Company	10-20-89	Tomato plants genetically engineered for resistance to Tobacco Mosaic Virus or Tomato Mosaic Virus.	Florida.
89-300-01	UpJohn Company	10-27-89	Cantaloupe and squash expressing resistance to Cucumber Mosaic Virus and/or Papaya Ringspot Virus.	Michigan.
89-305-01	UpJohn Company	11-01-89	Cantaloupe and squash expressing resistance to Cucumber Mosaic Virus and/or Papaya Ringspot Virus.	California.
89-305-03	UpJohn Company	11-01-89	Cantaloupe and squash expressing resistance to Cucumber Mosaic Virus and/or Papaya Ringspot Virus.	California.
89-311-01	UpJohn Company	11-07-89	Cantaloupe and squash expressing resistance to Cucumber Mosaic Virus and/or Papaya Ringspot Virus.	Georgia.

Done in Washington, DC, this 12th day of December 1989.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-29310 Filed 12-15-89; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 89-192]

U.S. Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to advise the public of the issuance, suspension, revocation, or termination of veterinary biological product and establishment licenses by the Animal and Plant Health Inspection Service during the months of August and September, 1989. These actions are taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act.

FOR FURTHER INFORMATION CONTACT: Joan Montgomery, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection

Service, U.S. Department of Agriculture, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6332.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, the Animal and Plant Health Inspection Service (APHIS) issued the following U.S. Veterinary Biological Product Licenses during the months of August and September 1989:

Product License Code	Date Issued	Product	Establishment	Establishment License No.
1081.00	08-28-89	Bordetella Bronchiseptica Vaccine, Avirulent Live Culture	MVP, Inc	301
1175.20	08-07-89	Bovine Rhinotracheitis-Virus Diarrhea-Parainfluenza$_3$ Vaccine, Killed Virus.	CEVA Laboratories, Inc	243-A
12B1.00	08-23-89	Bursal Disease Vaccine, Live Virus, Standard and Variant	Select Laboratories, Inc	279
1555.20	08-30-89	Feline Leukemia Vaccine, Killed Virus	Bio-Trends International	375
18M1.21	08-31-89	Parvovirus Vaccine, Modified Live Virus	Rhone Merieux, Inc	298
2051.00	08-01-89	Autogenous Bacterin	Addison Biological Laboratory, Inc	355
2051.00	08-11-89	Autogenous Bacterin	Arko Laboratories, Ltd	377
2051.00	08-31-89	Autogenous Bacterin	Texas Vet Lab, Inc	290
2671.01	08-01-89	Leptospira Canicola-Icterohaemorrhagiae Bacterin	American Home Products Corporation	112
3524.00	08-30-89	Escherichia Coli Antibody, Bovine Origin	Procor Technologies, Inc	370
4435.20	08-07-89	Bovine Rhinotracheitis-Virus Diarrhea Parainfluenza$_3$ Vaccine-Leptospira Canicola-Grippotyphosa-Hardjo-Icterohaemorrhagiae-Pomona Bacterin, Killed Virus.	CEVA Laboratories, Inc	243-A
4636.20	08-31-89	Canine Distemper-Adenovirus Type 2-Parainfluenza-Parvovirus Vaccine, Killed Virus, Leptospira Bacterin.	Diamond Scientific Co	213
5018.02	08-23-89	Canine Heartworm Antigen Test Kit	IDEXX Corp	313
5070.00	08-18-89	Mycoplasma Gallisepticum Antibody Test Kit	Kirkegaard and Perry Laboratories, Inc	350
5110.00	08-18-89	Pseudorabies Virus Antibody Test Kit	Fermenta Animal Health Company	272
6201.01	08-03-89	Clostridium Perfringens Types C&D Toxoid	American Home Products Corporation	112
G900.R0	08-17-89	Escherichia Coli, Killed Culture	Smithkline Beckman Corporation	189
1091.20	09-27-89	Bovine Respiratory Syncytial Virus Vaccine, Modified Live Virus	Beecham Inc	225
1185.20	09-08-89	Bovine Rhinotracheitis-Virus Diarrhea-Parainfluenza-Respiratory Syncytial Virus Vaccine, Killed Virus.	Fermenta Animal Health Company	272
1231.11	09-21-89	Bronchitis Vaccine, Mass Type, Live Virus	Tri Bio Laboratories	275-A
1271.00	09-21-89	Bursal Disease Vaccine, Live Virus	Tri Bio Laboratories	275-A
1271.01	09-21-89	Bursal Disease Vaccine, Live Virus	Tri Bio Laboratories	275-A
1271.02	09-21-89	Bursal Disease Vaccine, Live Virus	Tri Bio Laboratories	275-A
1275.00	09-21-89	Bursal Disease Vaccine, Killed Virus	Tri Bio Laboratories	275-A
12G5.40	09-21-89	Bursal Disease-Newcastle Disease, Killed Virus	Tri Bio Laboratories	275-A
1561.21	09-08-89	Feline Panleukopenia Vaccine, Modified Live Virus	Rhone Merieux, Inc	298
1565.20	09-08-89	Feline Panleukopenia Vaccine, Killed Virus	Rhone Merieux, Inc	298
1621.00	09-21-89	Fowl Pox Vaccine, Live Virus	Tri Bio Laboratories	275-A
1621.01	09-21-89	Fowl Pox Vaccine, Live Virus	Tri Bio Laboratories	275-A
1641.00	09-21-89	Marek's Disease Vaccine, Live Turkey Herpesvirus, Cell Associated	Tri Bio Laboratories	275-A
1641.01	09-21-89	Marek's Disease Vaccine, Live Turkey Herpesvirus, Cell Free	Tri Bio Laboratories	275-A
16C1.20	09-08-89	Feline Rhinotracheitis-Calici Vaccine, Modified Live Virus	Rhone Merieux, Inc	298
16D8.20	09-08-89	Feline Rhinotracheitis-Calici-Panleukopenia Vaccine, Modified Live Virus.	Rhone Merieux, Inc	298
16D9.20	09-08-89	Feline Rhinotracheitis-Calici-Panleukopenia Vaccine, Modified Live Virus.	Rhone Merieux, Inc	298
1705.10	09-21-89	Newcastle Disease Vaccine, Killed Virus	Tri Bio Laboratories	275-A
1711.10	09-21-89	Newcastle Disease Vaccine, B_1 Type, B_1 Strain, Live Virus	Tri Bio Laboratories	275-A
1721.10	09-21-89	Newcastle Disease Vaccine, B_1 Type, Lasota Strain, Live Virus	Tri Bio Laboratories	275-A
1761.11	09-21-89	Newcastle-Bronchitis Vaccine, B_1 Type, B_1 Strain, Mass Type, Live Virus.	Tri Bio Laboratories	275-A
1771.11	09-21-89	Newcastle-Bronchitis Vaccine, B_1 Type, Lasota Strain, Mass Type, Live Virus.	Tri Bio Laboratories	275-A
1851.00	09-21-89	Pasteurella Haemolytica Vaccine, Avirulent Live Culture	Tri Bio Laboratories	275-A
1871.06	09-21-89	Pasteurella Multocida Vaccine, Avirulent Live Culture, Bovine Isolates.	Tri Bio Laboratories	275-A
18M1.21	09-11-89	Parvovirus Vaccine, Modified Live Virus	American Home Products Corporation	112
44A5.20	09-11-89	Bovine Rhinotracheitis-Virus Diarrhea-Parainfluenza$_3$ Respiratory Syncytial Virus Vaccine-Pasteurella Heamolytica Bacterin, Killed Virus.	American Home Products Corporation	112
5021.00	09-15-89	Canine Brucellosis Antibody Test Kit	Rhone Merieux, Inc	298
A275.10	09-21-89	Bursal Disease Virus, Killed Virus, For Further Manufacture	Tri Bio Laboratories	275-A
A2A5.10	09-21-89	Bursal Disease Virus, Killed Variant, Viral Fluids, For Further Manufacture.	Tri Bio Laboratories	275-A
B702.13	09-21-89	Pasteurella Multocida Bacterin, Avian Isolates, Types 1, 3, & 4, For Further Manufacture.	Tri Bio Laboratories	275-A

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be

issued, and the form of the license. Pursuant to these regulations, APHIS issued the following U.S. Veterinary Biologics Establishment Licenses during the months of August and September, 1989:

Establishment	Establishment License No.	Date Issued
Addison Biological Laboratory, Inc.	355	08-01-89
Procor Technologies, Inc	370	08-30-89
Bio Trends International	375	08-30-89
Tri Bio Laboratories, Inc	275-A	09-21-89

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses and U.S. Veterinary Biologics Establishment Licenses. Pursuant to these regulations, on September 21, 1989, APHIS terminated U.S. Veterinary Biologics Establishment License No. 280-A issued to Keevet Laboratories. Also, pursuant to these regulations, APHIS terminated the following U.S. Veterinary Biological Product Licenses during the months of August and September 1989:

Product License Code	Date Terminated	Product	Establishment	Establishment License No.
1231.19	08-30-89	Bronchitis Vaccine, JMK Type, Live Virus	Salsbury Laboratories	195
1271.12	08-30-89	Bursal Disease Vaccine, Live Virus	Salsbury Laboratories	195
2648.08	08-30-89	Escherichia Coli Bacterin	Salsbury Laboratories	195
B6R8.56	08-30-89	Escherichia Coli Bacterin, For Further Manufacture	Smithkline Beckman Corporation	189
1231.11	09-21-89	Bronchitis Vaccine, Mass Type, Live Virus	Keevet Laboratories	280-A
1271.00	09-21-89	Bursal Disease Vaccine, Live Virus	Keevet Laboratories	208-A
1271.01	09-21-89	Bursal Disease Vaccine, Live Virus	Keevet Laboratories	208-A
1271.02	09-21-89	Bursal Disease, Vaccine Live Virus	Keevet Laboratories	208-A
1275.00	09-21-89	Bursal Disease, Vaccine Killed Virus	Keevet Laboratories	208-A
12G5.40	09-21-89	Bursal Disease-Newcastle Disease, Killed Virus	Keevet Laboratories	208-A
1621.00	09-21-89	Fowl Pox Vaccine, Live Virus	Keevet Laboratories	208-A
1621.01	09-21-89	Fowl Pox Vaccine, Live Virus	Keevet Laboratories	208-A
1641.00	09-21-89	Marek's Disease Vaccine, Live Turkey Herpesvirus, Cell Associated	Keevet Laboratories	208-A
1641.01	09-21-89	Marek's Disease Vaccine, Live Turkey Herpesvirus, Cell Free	Keevet Laboratories	208-A
1705.10	09-21-89	Newcastle Disease Vaccine, Killed Virus	Keevet Laboratories	208-A
1711.10	09-21-89	Newcastle Disease Vaccine, B_1 Type, B_1 Strain, Live Virus	Keevet Laboratories	208-A
1721.10	09-21-89	Newcastle Disease Vaccine, B_1 Type, Lasota Strain, Live Virus	Keevet Laboratories	208-A
1761.11	09-21-89	Newcastle-Bronchitis Vaccine, B_1 Type, B_1 Strain, Mass Type, Live Virus.	Keevet Laboratories	208-A
1771.11	09-21-89	Newcastle-Bronchitis Vaccine, B_1 Type, Lasota Strain, Mass Type, Live Virus.	Keevet Laboratories	208-A
1851.00	09-21-89	Pasteurella Haemolytica Vaccine, Avirulent Live Culture	Keevet Laboratories	208-A
1871.06	09-21-89	Pasteurella Multocida Vaccine, Avirulent Live Culture, Bovine Isolates.	Keevet Laboratories	208-A
A275.10	09-21-89	Bursal Disease Virus, Killed Virus	Keevet Laboratories	208-A
A2A5.10	09-21-89	Bursal Disease Virus, Killed Variant, Viral Fluids	Keevet Laboratories	208-A
B702.13	09-21-89	Pasteurella Multocida Bacterin, Avian Isolates, Types 1, 3, & 4	Keevet Laboratories	208-A

Done in Washington, DC., this 12th day of December 1989.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-29311 Filed 12-15-89; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Use of Herbicides to Control Undesirable Understory Vegetation; Allegheny National Forest, Elk, Forest, McKean and Warren Counties, PA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a draft and final environmental impact statement (EIS) which will reconsider the limited use of herbicides to control undesirable understory vegetation on some forested lands within the Allegheny National Forest. The Allegheny National Forest Land and Resource Management Plan, completed in 1986, approved limited use of herbicides for this purpose. The draft EIS and Final EIS will also evaluate site-specific proposals for understory vegetation control

The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice that a full environmental analysis will occur on the proposal so that interested and affected people are aware of how they may participate in and contribute to the final decision. Comments directed to the substance of the proposal, as opposed to the scope, are more appropriately submitted during the comment period following release of the draft environmental impact statement. This EIS will likely result in an amendment to the Allegheny National Forest Land and Resource Management Plan.

DATE: Comments concerning the scope of the analysis should be received in writing by January 16, 1990, to ensure timely consideration.

ADDRESS: Send written comments to Herbicide Analysis, Allegheny National Forest, 222 Liberty Street, P.O. Box 847, Warren, PA 16365.

FOR FURTHER INFORMATION: Contact either Robert L. White, Forest Silviculturist, or Brad B. Nelson, Forest Ecologist, Allegheny National Forest, phone 814/723-5150.

SUPPLEMENTARY INFORMATION: The Allegheny National Forest Land and Resource Management Plan (Forest Plan) was completed and approved in April 1986. One management decision in the Forest Plan provides for the use of the herbicide Roundup [R] (active ingredient is glyphosate) to control undesirable understory vegetation as a method of establishing adequate tree seedlings which will perpetuate new trees following timber harvesting. Undesirable understory vegetation includes New York and hay-scented

fern, grasses, beech brush and striped maple. The Forest Plan estimates the need to treat approximately 2,000 acres per year for the 10-year management period 1986–1995. Between 1987 and 1989, the Forest treated 2,826 acres with herbicide.

Treatment results have generally been good; however, the Forest has identified a need to achieve better control of ferns within spray vehicle tracks and of grasses which germinate from seed following spraying.

The Forest Plan also states that as research identifies a better herbicide, its appropriateness for use will be evaluated. Based upon the glyphosate spraying results mentioned above and the results of recent research, sulfometuron methyl (formulated as the herbicide Oust ®) has been identified as another desirable agent for controlling undesirable understory vegetation both exclusively and together with glyphosate.

A range of alternatives for this proposal will be considered including no treatment, continued use of glyphosate only, and use of glyphosate and/or sulfometuron methyl. The draft and final EIS will also include a site-specific analysis of proposed treatments for Fiscal Year 1990.

Federal, State and local agencies, and other individuals or organizations who may be interested in or affected by the decision are invited to participate in the scoping process. This process will include: (1) Identification of potential issues; (2) identification of issues to be analyzed in depth; and (3) elimination of insignificant issues or those which have been covered by a previous environmental review.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible.

Preliminary issues that have been identified are: (1) What are the human health effects; (2) how should the Forest control undesirable understory vegetation so that adequate tree seedlings can become established and perpetuate the forest; (3) what are the effects on wildlife and fish; and (4) what are the economic costs of various treatment techniques.

The analysis is expected to take two (2) months. The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in February 1990. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register.**

The comment period on the draft environmental impact statement will be 45 days from the date the EPA notice of availability appears in the **Federal Register.** It is very important that those interested in the management of the Allegheny National Forest participate at that time. To be most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived if not raised until after completion of the final environmental impact statement, *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1988) and *Wisconsin Heritages Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

Comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

After the comment period ends on the draft environmental impact statement, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed in April 1990. In the final environmental impact statement the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the environmental impact statement, and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR 217.

The responsible official is David J. Wright, Forest Supervisor, Allegheny National Forest, 222 Liberty Street, P.O. Box 847, Warren, Pennsylvania 16365.

Dated: December 12, 1989.

David J. Wright,

Forest Supervisor.

[FR Doc. 89–29356 Filed 12–15–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Technical Information Service

Prospective Grant of Exclusive Patent License

This notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States and foreign countries to practice the invention embodied in U.S. Patent Application Serial Number 07–226,057, "Device of Sustained-Release of a Chemical onto An Animal and Method of Using the Device", to SmithKline Beecham Corporation having a place of business at Philadelphia, PA. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703/

487–4650 or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Girish C. Barua, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–29342 Filed 12–15–89; 8:45 am]

BILLING CODE 3510–04–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Marine Corps Advertising Awareness and Attitude Tracking Study.

OBM Control Number: 0704–0155.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 21 minutes.

Frequency of Response: Semi-annual.

Number of Respondents: 900.

Annual Burden Hours: 630.

Annual Responses: 1800.

Needs and Uses: The Marine Corps Advertising Awareness and Attitude Tracking Study is used by the Marine Corps to measure effectiveness of current advertising campaigns and to plan future advertising campaigns.

Affected Public: Individuals.

Frequency: Semi-annual.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, room 3235, New Executive Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHE/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: December 12, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–29334 Filed 12–15–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Intent To Grant Exclusive Patent License

Pursuant to the provisions of part 404 of title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Hemostasis Diagnostics International Company (HDI), 800 Clermont Street, Suite 20, Denver, Colorado 80220, a corporation of the State of Colorado, an exclusive license under United States Letters Patent No. 4,877,741, which matured from application Serial No. 07/261,302, filed 24 October 1988 in the names of James L. Babcock and David L. McGlasson for "Treatment of Human Plasma with Brown Recluse Spider Toxin to Emulate a Lupus Anticoagulant."

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this Notice. Copies of the patent may be obtained, on request, from same addressee.

All communications concerning this Notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, SW., Washington, DC 20324–1000, telephone No. (202) 475–1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–29323 Filed 12–5–89; 8:45 am]

BILLING CODE 3910–01–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee will meet on January 24–25, 1990. The meeting will be held at the NASA Lyndon B. Johnson Space Center, Houston, Texas. The meeting will commence at 8 a.m. and terminate at 5 p.m. on January 24; and commence at 8 a.m. and terminate at 12 noon on January 25, 1990. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings and demonstrations for the committee members on space travel, astronaut training, and state-of-the-art technology and simulators. The agenda will include briefings and discussions related to Lunar/Mars space travel, superconductivity/avionics research, shuttle and space station training, robotics, orbital debris, and physiological aspects of space travel. These briefings, discussions and demonstrations will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c) (1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4870.

Dated: December 12, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–25339 Filed 12–15–89; 8:45 am]

BILLING CODE 3810–A–E

Intent To Grant Partially Exclusive Patent License; Coulter Immunology Division, Coulter Corp.

SUMMARY: The Department of the Navy hereby gives notice of intent to grant to Coulter Corp. a revocable, nonassignable, partially exclusive license to practice the Government-owned invention described in U.S. Patent No. 4,710,472, "Magnetic Separation Device," issued December 1, 1987, inventors: Joseph W. Saur, Charles P. Reynolds, and Alfred T. Black.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of the Chief of Naval Research (Code OOCIP), Arlington, Virginia 22217–5000.

DATE: December 18, 1989.

FOR FURTHER INFORMATION: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 N. Quincy Street, Arlington VA 22217-5000, telephone (202) 696-4001.

Dated: December 12, 1989.

Sandra M. Day,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-29340 Filed 12-15-89; 8:45 am]

BILLING CODE 3810-AE-M

Privacy Act of 1974; Amended Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Notice of amended systems of records subject to the Privacy Act.

SUMMARY: The Department of the Navy proposes to amend eight systems of records in its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: This proposed action will be effective without further notice January 17, 1990, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), room 5E521, Department of the Navy, The Pentagon, Washington, DC 20350-2000. Telephone (202) 697-1459, Autovon: 227-1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices inventory subject to the Privacy Act of 1974 have been published in the Federal Register as follows:

51 FR 12908, Apr 16, 1986
51 FR 18086, May 16, 1986 (Compilation, changes follow)
51 FR 19884, Jun 3, 1986
51 FR 30377, Aug 26, 1986
51 FR 30393, Aug 26, 1986
51 FR 45931, Dec 23, 1986
52 FR 2147, Jan 20, 1987
52 FR 2149, Jan 20, 1987
52 FR 8500, Mar 18, 1987
52 FR 15530, Apr 29, 1987
52 FR 22671, Jun 15, 1987
52 FR 45846, Dec 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, Jun 8, 1988
53 FR 22028, Jun 13, 1988
53 FR 25363, Jul 6, 1988
53 FR 39499, Oct 7, 1988
53 FR 41224, Oct 20, 1988
54 FR 8322, Feb 28, 1989
54 FR 14377, Apr 11, 1989
54 FR 32682, Aug 9, 1989
54 FR 40160, Sep 29, 1989
54 FR 41495, Oct 10, 1989
54 FR 43453, Oct 25, 1989
54 FR 45781, Oct 31, 1989
54 FR 48131, Nov 21, 1989

The specific changes to the record systems being amended are set forth below, followed by the system notices, as amended, published in their entirety. These notices are not within the purview of subsection (r) of the Privacy Act, 5 U.S.C. 552a, which requires the submission of altered systems reports.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 12, 1989

N01301-1

SYSTEM NAME:

Judge Advocate General Reporting Questionnaire (51 FR 18106, May 16, 1986).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete the entire entry and substitute with "Name, rank, branch of service, date of rank, date reported, previous duty station, date detached, Social Security Number, designator, division assignment, room number, office phone, spouse's name, number of dependents' spouse's employment, dependents names and ages, home telephone number, home address, name of officer relieving, billet sequence code, unit identification code, place of birth, date of birth, security clearance, basis, completed by and date of completion."

* * * * *

N01301-1

SYSTEM NAME:

Judge Advocate General Reporting Questionnaire.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 61), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers reporting for duty in the Office of the Judge Advocate General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank, branch of service, date of rank, date reported, previous duty station, date detached, Social Security Number, designator, division assignment, room number, office phone, spouse's name, number of dependents' spouse's employment, dependents names and ages, home telephone number, home address, name of officer relieving, billet sequence code, unit identification code, place of birth, date of birth, security clearance, basis, completed by and date of completion.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 806 and E.O. 9397.

PURPOSE(S):

To assist the Judge Advocate General in assignment of officers within the Office of the Judge Advocate General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in a folder alphabetically and are stored in a file cabinet.

RETRIEVABILITY:

Retrieved by officer's name.

SAFEGUARDS:

Records are maintained in a file cabinet under the control of authorized personnel during working hours; and the office space in which the cabinet is located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are destoryed when the officer is transferred from the Office of the Judge Advocate General.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400.

The request should contain the full name of the individual concerned and must be signed. For personal visits, the requesting individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address

written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

The request should contain the full name of the individual concerned and must be signed. For personal visits, the requesting individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information submitted by the officer upon his/her reporting for duty in the Office of the Judge Advocate General.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01531-1

SYSTEM NAME:

USNA Applicants, Candidates, and Midshipmen Records (52 FR 2147, January 20, 1987)

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete the entire entry and substitute with "Admissions records contain pre-candidate questionnaires concerning educational background, personal data, physical data, extracurricular activities, and employment; personal data; personal statements; transcripts from previously attended academic institutions; admission test results; physical aptitude exam results; recommendation letters from school officials and others; professional development tests; interest inventory; extracurricular activities reports; reports of officer interviews; records of prior military service; and, Privay Act disclosure forms. Nomination and appointment records include all card files of congressional offices and the names of persons whom each congressman appointed; files of candidates nominated for the following academic year; status cards, indexed by nominating source of all candidates appointed, admitted, and graduated, or resigned prior to graduation. Similar files are separately kept on foreign candidates.

Performance jackets and academic records include performance aptitude evaluations, preformance grades, personal history, autobiography, record of emergency data, aptitude history, review boards records, medical excuse from duty forms, conduct records and grades, professional development tests, counseling and guidance interview sheets and data forms, academic grades, class rankings, letters of commendation, training records, Oath of Office, Agreement to Service, Privacy Act disclosure forms and other such records and information relative to the midshipmen."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete the entire entry and substitute with "5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 6956, 6957, 6958, 6962 and 6963; 44 U.S.C. 3101; and E.O. 9397."

PURPOSE(S):

In last sentence, delete the "." and add ", and midshipmen for summer training programs."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

After paragraph five, add "The Contract Tailor Shop for the limited purpose of scheduling appointments as required for uniform fittings."

* * * * *

N01531-1

SYSTEM NAME:

USNA Applicants, Candidates, and Midshipmen Records.

SYSTEM LOCATION:

U.S. Naval Academy, Annapolis, MD 21402–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants and candidates for admission and Naval Academy Midshipmen.

CATEGORIES OF RECORDS IN THE SYSTEM:

Admissions records contain pre-candidate questionnairies concerning educational background, personal data, physicial data, extracurricular activities, and employment; personal data; personal statements; transcripts from previously attended academic institutions; admission tests results; physical aptitude exam results; recommendation letters from school officials and others; professional development tests; interest inventory; extracurricular activities reports; reports of officer interviews; records of prior military service; and, Privacy Act disclosure forms. Nomination and appointment records include all card files of congressional offices and the names of persons whom each congressman appointed; files of candidates nominated for the following academic year; status cards, indexed by nominating source of all candidates appointed, admitted, and graduated, or resigned prior to graduation. Similar files are separately kept on foreign candidates.

Performance jackets and academic records include performance aptitude evaluations, performance grades, personal history, autobiography, record of emergency data, aptitude history, review boards records, medical excuse from duty forms, conduct records and grades, professional development tests, counseling and guidance development tests, counseling and guidance interview sheets and data forms, academic grades, class rankings, letters of commendation, training records, Oath of Office, Agreement to Serve, Privacy Act disclosure forms and other such records and information relative to the midshipmen.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 6956, 6957, 6958, 6962, and 6963; 44 U.S.C. 3101; and E.O. 9397.

PURPOSE(S):

To establish an audit trail of files which contains information on individuals as they progress from the application stage, through the admissions process, to disenrollment or graduation from the Naval Academy. Applicant's files contain information which is used to evaluate and to determine competitive standing and eligibility for appointments to the Naval Academy. Successful applicants become candidates whose files contain information to evaluate further each candidate's eligibility. Candidates' files are also used to identify candidates profiles for initiation of formal officer accession programs in conjunction with the Naval Academy admission process. Successful candidates who accept appointments become midshipmen. Midshipment records contain personal, academic, and professional background information and are used for the management, supervision, administration, counseling, and discipline of midshipmen.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Parents and legal guardians of midshipmen for the limited purpose of counseling midshipmen who encounter academic, performance, or disciplinary difficulties.

The United States Naval Institute for the limited purpose of notifying midshipmen and their parents about benefits and opportunities provided by the United States Naval Institute.

The Naval Academy Athletic Association for the limited purpose of promoting and funding the Naval Academy Intercollegiate Athletic Program.

The United States Naval Academy Foundation for the limited purpose of sponsoring midshipment candidates who were not admitted in previous years.

The United States Naval Academy Alumni Association for the limited purpose of supporting its activities related to the mission of the Naval Academy.

The Contract Tailor Shop for the limited purpose of scheduling appointments as required for uniform fittings.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All hard copy records are kept in file folders in secure rooms or in locked cabinets.

On-line storage is maintained on the Honeywell DPS8 mainframe in Computer Services, with line networking to VACs and interfacing with microcomputers and dial-up lines.

Off-line storage is kept on disks.

Records on magnetic tapes and hard copy data are kept in secured rooms or in locked cabinets for operator access and user pickup.

Backup magnetic tapes are kept in a vault.

RETRIEVABILITY:

Records are kept alphabetically by Company and Class. Records can be retrieved from data base by selection of any data element, i.e., name, address, alpha code, six digit candidate number, or Social Security Number, etc.

SAFEGUARDS:

Visitor control. Records are kept in locked cabinets or in secured rooms. Computer records are safeguarded through selective file access, signing of Privacy Act forms, passwords, RAM systems, program passwords, user controls, encoding and port controls. Disk and tape storage is in a secure room. Backup systems on magnetic tapes are secured in fire proof vault in Ward Hall.

RETENTION AND DISPOSAL:

On-line computer records are destroyed one year after the midshipman's class graduates or the midshipman is separated.

Performance records are retained by the Performance Officer for two years after the midshipman's class graduates, and then destroyed. Backup systems on magnetic tapes and disks are kept in secure storage and destroyed two years after the midshipman's class graduates. Files relative to midshipmen separated involuntarily, including by qualified resignation, are retained for two years after the midshipman's class graduates, or three years from the date of separation, whichever date is later, and then destroyed.

Official transcripts and records files are kept indefinitely by the Registrar on microfilm, computer files, magnetic tapes, and hard copy; Admission records of unsuccessful candidates are properly destroyed after one year. Counseling and Guidance Research data are kept by the Professional Development Research Coordinator indefinitely. Nomination and appointment files are retained for varying lengths of time.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, United States Naval Academy, Annapolis, MD 21402-5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Superintendent, United States Naval Academy, Annapolis, MD 21408-5000. Written requests should contain full name, company, class, and any personal identifier, such as a Social Security Number.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Superintendent, United States Naval Academy, Annapolis, MD 21408-5000. Written requests should contain full name, company, class, and any personal identifier, such as a Social Security Number.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals, midshipman, supervisors, Registrar, instructors, professors, officers, midshipman personal history/ performance record, midshipman autobiography, Record of Emergency Data (NAVPERS 601-2), Statement of Personal History (DD Form 398), Aptitude History Record (Form 1610-105), Midshipman Summary Sheet, Certificate of Release or Discharge From Active Duty (DD Form 214), Military Performance Board Results, Letters of Probation, Midshipmen Performance Evaluation Reports (Form 54A), Medical Reports, Clinical Psychologist Reports, Excused Squad Chits (Form 6320/20), Conduct Card (Form 1690/91C), Letters of Commendation, Counseling and Guidance Interview and Data Records, Letters of Congressmen, parents, etc., and copies of replies thereto, transcripts from high school or prior college, Review Board Records, and Record of Disclosure (Privacy Act).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05760-1

SYSTEM NAME:

Biographical and Service Record Sketches of Chaplains (51 FR 18164, May 16, 1989)

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete the entire entry and substitute with "Chaplain Corps Historian, Chaplain Resource Board, 6500 Hampton Boulevard, Norfolk, VA 23508-1296."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete the entire entry and substitute with "5 U.S.C. 301, Departmental Regulations".

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete the entire entry and substitute with "Chaplain Corps Historian, Chaplain Resource Board, 6500

Hampton Boulevard, Norfolk, VA 23508–1296."

* * * * *

N05760–1

SYSTEM NAME:

Biographical and Service Record Sketches of Chaplains.

Delete the entire entry and substitute with "Chaplain Corps Historian, Chaplain Resource Board, 6500 Hampton Boulevard, Norfolk, VA 23508–1296."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy chaplains who have served on extended active duty at some time during the period 1778–1981 inclusive, and any future editions. It lists the names, years in which they were commissioned, and the ecclesiastical affiliations of all who held chaplaincy commissions during the period.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical and professional summary which includes individual's full name, denomination of faith group, date and place of birth, education, ordination, date of marriage and name of spouse, first names of children, prior professional experience, authorship, prior military service (including date of commission, date of rank of commissioning, ships/stations, places and dates; and period spent, if any, in Inactive Reserve), date of augmentation (if applicable), promotion history, awards and decorations, conclusion of active duty (date of resignation, release from active duty, or retirement as applicable), post active duty career (retirees only), and distinctions which have made the chaplains career interesting or unusually significant (corroborative material suggested).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To provide background data in response to news media requests; to provide information on individual chaplains prior to public appearances in which they are scheduled to appear; to provide internal release of information as required.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in bound and published volumes. Source materials are in paper files.

RETRIEVABILITY:

Data is retrieved alphabetically by individual names.

SAFEGUARDS:

Files are locked after official working hours.

RETENTION AND DISPOSAL:

Forms and documents are destroyed after five years from the date of publication. The volumes are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chaplain Corps Historian, Chaplain Resource Board, 6500 Hampton Boulevard, Norfolk, VA 23508–1296.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chaplain Corps Historian, Chaplain Resource Board, 6500 Hampton Boulevard, Norfolk, VA 23508–1296.

The request should contain full name and address of the individual.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chaplain Corps Historian, Chaplain Resource Board, 6500 Hampton Boulevard, Norfolk, VA 23508–1296.

The request should contain full name and address of the individual.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from returned questionnaires addressed to individual chaplains, supplemented by Officer Data Cards and historical research.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05800–2

SYSTEM NAME:

Legal Records System (51 FR 18165, May 16, 1986).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete the entire entry and substitute with "Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120 and naval medical facilities. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of records systems notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete the entire entry and substitute with "Naval (military and civilian) health care personnel or staff employed at naval medical facilities; patients and visitors of medical facilities."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete the entire entry and substitute with "Requests for legal representation; requests for information by subpoena; requests for assistance; all background material necessary to answer the requests; and copies of letters replying to the requests.

Article 138, UCMJ complaints and all proceedings, including statements, affidavits, correspondence, briefs, conditions, court records, etc.

Incident reports and in-house investigations compiled as background for possible claims."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete the entire entry and substitute with "5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 938; Article 15(g), UCMJ; Naval Military Personnel Manual; 28 U.S.C. 1346(b), "Federal Torts Claim Act"; 42 U.S.C. 2651–2653, "Medical Care Recovery Act"."

PURPOSE(S):

Delete the entire entry and substitute with "To provide a record of individual requests and responses for reference and appellate purposes and to prepare responses to individual requests.

To provide background for the proceedings on complaints and review of those complaints.

To prepare correspondence and materials for actual or possible disciplinary proceedings.

To investigate, provide background on, and determine future action concerning possible claims."

* * * * *

RETRIEVABILITY:

Delete the entire entry and substitute with "By name of involved person; date; type of incident, claim, or complaint; location of incident; or by object of request."

SAFEGUARDS:

Delete the entrie entry and substitute with "Files are maintained in file cabinets and other manual storage devices under the control of authorized during working hours; the office spaces in which the file cabinets and storage devices are located are locked outside office working hours."

RETENTION AND DISPOSAL:

Delete the entire entry and substitute with "Records are retained for two years after final action and then destroyed."

SYSTEM MANAGER(S) AND ADDRESS:

Delete the entrie entry and substitute with "Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120."

* * * * *

N05800–2

SYSTEM NAME:

Legal Records System.

SYSTEM LOCATION:

Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120 and naval medical facilities. Official mailing addresses are published as an appendix to the Navy's compilation of systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Naval (military and civilian) health care personnel or staff employed at medical facilities; patients and visitors of medical facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for legal representation; requests for information by subpoena; requests for assistance; all background material necessary to answer the requests; and copies of letters replying to the requests.

Article 138, UCMJ complaints and all proceedings, including statements, affidavits, correspondence, briefs, conditions, court records, etc.

Incident reports and in-house investigations compiled as background for possible claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Article 138, UCMJ; 10 U.S.C. 938; Article 15, UCMJ; Naval Military Personnel Manual; 28 U.S.C. 1346(b), "Federal Torts Claim Act"; 42 U.S.C. 2651–2653, "Medical Care Recovery Act".

PURPOSE(S):

To provide a record of individual requests and responses for reference and appellate purposes and to prepare responses to individual requests.

To provide background for the proceedings on complaints and review of those complaints.

To prepare correspondence and materials for actual or possible disciplinary proceedings.

To investigate, provide background on, and determine future action concerning possible claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, forms, letters.

RETRIEVABILITY:

By name of involved person; date; type of incident, claim, or complaint; location of incident; or by object of request.

SAFEGUARDS:

Files are maintained in file cabinets and other manual storage devices under the control of authorized personnel during working hours; the office spaces in which the file cabinets and storage devices are located are locked outside office working hours.

RETENTION AND DISPOSAL:

Records are retained for two years after final action and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquires to the naval medical facility where the incident took place or to the Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120. Official mailing addresses are published as an appendix to the Navy's compilation of systems notices.

Written requests should contain full name, Social Security Number, military status, approximate date of contact with system (if known).

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the naval medical facility where the incident took place or to the Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120. Official mailing addresses are published as an appendix to the Navy's compilation of systems notices.

Written requests should contain full name, Social Security Number, military status, approximate date of contact with system (if known).

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Investigative reports (as from JAG Manual investigations, Office of Naval Intelligence reports, security system, etc), Military Personnel system, medical records, personal interviews, personal observations, reported by persons witnessing or knowing of incidents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05802–1

SYSTEM NAME:

Fiduciary Affairs Records (51 FR 18166, May 16, 1986).

CHANGES:

* * * * *

RETRIEVABILITY:

In lines one and two, deleted "* * * or by the name of the trustee."

* * * * *

RETENTION AND DISPOSAL:

At the end of the entry, add "In addition, Fiduciary Affairs files which have been closed for a period of five years are transferred to the Federal Records Center, Suitland, MD."

* * * * *

SYSTEM NAME:

Fiduciary Affairs Records.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 12), Department of the Navy, 200

Stovall Street, Alexandria, VA 22332–2400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active duty, fleet reserve, and retired members of the Navy and Marine Corps who have been medically determined to be mentally incapable of managing their financial affairs, their appointed or prospective trustees, and members' next-of-kin.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains proceedings of medical boards, documentation indicating the origin of the mental incapability, the name(s) and address(es) of the individual's next-of-kin, the disability retirement index, a copy of the interview(s) of prospective trustee(s), the appointment of the approved trustee, authority to pay the individual's retirement pay to the approved trustee, the instruction of duties and responsibilities to the trustee, annual trustee accounting reports, copy of the trustee's surety bond, a copy of the affidavit executed by the trustee to obtain the surety bond, miscellaneous correspondence relating to the trustee's duties and responsibilities, annual approvals of the trustee account, discharge(s) of trustee, release(s) of surety, periodic physical examinations, medical records and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; 37 U.S.C. 601–604; and 44 U.S.C. 3101.

PURPOSE(S):

To provide non-judicial financial management of military pay and allowances payable to active duty, fleet reserve, and retired Navy and Marine Corps members for the period during which they are medically determined to be mentally incapable of managing their financial affairs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To officials of the Department of Justice when there is reason to suspect financial mismanagement and no satisfactory settlement with the surety can be reached.

To officials and employees of the Veterans Administration in connection with programs administered by that agency.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

paper records in file folders stored in file cabinets or other storage devices.

RETRIEVABILITY:

By name of the member.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Indefinitely; however, after the death of a member, his/her files are transferred to the Federal Records Center, Suitland, MD 20409. In addition, Fiduciary Affairs files that have been closed for a period of five years are transferred to the Federal Records Center, Suitland, Maryland.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332–2400. The request should contain the full name of the individual concerned and should be signed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332–2400. The request should contain the full name of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Components within the Department of the Navy, medical doctors, approved trustees, prospective trustees, surety companies, and the Veterans Administration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NO5813–1

SYSTEM NAME:

Ethics File (51 FR 18168, May 16, 1986).

CHANGES:

SYSTEM LOCATION:

In line two, change "(Code 20)" to read "(Code 01)".

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete the entire entry and substitute with "Civilian and military lawyers certified by the Judge Advocate General of the Navy: (1) Under the provisions of article 27(b) of the Uniform Code of Military Justice (UCMJ); or (2) as legal assistance attorneys; and (3) whose professional or personal conduct has been brought into question under JAGINST 5803.1. Attorneys not certified under article 27(b), UCMJ or as legal assistance attorneys but who practice under the supervision of the Judge Advocate General of the Navy are also included in the system."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete the entire entry and substitute with "Manual of the Judge Advocate General, Section 0165, 5 U.S.C. 301, Departmental Regulations; and JAGINST 5803.1."

PURPOSE(S):

Delete the entire entry and substitute with "To record the disposition of ethics complaints, to provide a record of individual lawyers who are not authorized to practice as legal assistance attorneys, before courts-martial, in other proceedings under the UCMJ, or in administrative proceedings, and to document ethics violations and corrective action taken."

* * * * *

RETRIEVABILITY:

Delete the entire entry and substitute with "Files are kept in alphabetical order according to the last name of the attorney concerned."

* * * * * *

RECORD SOURCE CATEGORIES:

Delete the entire entry and substitute with "Correspondence from individuals, military judges, staff judge advocates, and other military personnel; correspondence from the Judge Advocate General of other branches of the Armed Forces; investigative reports from Naval Investigative Service Command and other offices, correspondence from other military and civilian authorities and copies of court papers."

* * * * *

NO5813-1

SYSTEM NAME:

Ethics File.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 01), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian and military lawyers certified by the Judge Advocate General of the Navy: (1) Under the article 27(b) of the Uniform Code of Military Justice (UCMJ); or (2) as legal assistance attorneys; and (3) whose professional or personal conduct has been brought into question under JAGINST 5803.1. Attorneys not certified under article 27(b), UCMJ or as legal asssitance attorneys but who practice under the supervision of the Judge Advocate General of the Navy are also included in the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of investigation, correspondence, and court papers relating to the complaint brought against attorneys.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Manual of the Judge Advocate General, Section 0165, 5 U.S.C. 301, Departmental Regulations; and JAGINST 5803.1.

PURPOSE(S):

To record the disposition of ethics complaints, to provide a record of individual lawyers who are not authorized to practice as legal assistance attorneys, before courts-martial, in other proceedings under the UCMJ, or in administrative proceedings, and to document ethics violations and corrective action taken.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept in alphabetical order according to the last name of the attorney concerned.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for two years and then forwarded to the Federal Records Center, Suitland, MD 20409 for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400.

The written request should include the full name of the individual concerned and must be signed. Personal visits may be made to the assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, room 9N21, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332-2400, during normal working hours; Monday through Friday, 8 a.m. to 4:30 p.m. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400. The written request should include the full name of the individual concerned and must be signed.

Personal visits may be made to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Room 9N21, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332-2400, during normal working hours; Monday through Friday 8 a.m. to 4:30 p.m. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces identification card, driver's license, etc.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence from individuals, military judges, staff judge advocates, and other military personnel; correspondence from the Judge Advocate General of other branches of the Armed Forces; investigative reports from Naval Investigative Service Command and other offices, correspondence from other military and civilian authorities and copies of court papers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N12290-2

SYSTEM NAME:

Models for Organizational Design and Staffing (MODS) (51 FR 18214, May 16, 1986).

CHANGES:

* * * * *

SYSTEM LOCATION:

In line one, delete "Chief of Naval Operations (OP-16)" and substitute with "Office of Civilian Personnel Management".

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

At the end of the entry, add "and E.O. 9397."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete the entire entry and substitute with "Director, Office of Civilian Personnel Management, 800 North Quincy Street, Arlington, VA 22203–1998."

NOTIFICATION PROCEDURE:

In lines two, three, and four, delete "Chief of Naval Operations (OP–14)," and substitute with "Office of Civilian Personnel Management,".

* * * * *

N12290–2

SYSTEM NAME:

Models for Organizational Design and Staffing (MODS).

SYSTEM LOCATION:

Office of Civilian Personnel Management and Navy Department Staff, Headquarters, field activities employing civilians; also at contractor facilities. Official mailing addresses are published as an appendix to the Navy's compilation of records systems.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy civilian employees paid from appropriated funds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Automated and manual files contain information on individual's proficiencies and knowledges as reported in self-evaluation questionnaires vouchered by the supervisor, as well as data on the requirements of specific jobs submitted by the supervisor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; and E.O. 9397.

PURPOSE(S):

To test the operational usefulness of a staffing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To officials and employees of the Office of Personnel Management in the performance of their duties related to staffing and/or evaluation of civilian manpower programs.

To the University of Texas faculty and students working under a contract relating to MODS to monitor progress of research study.

To Carnegie-Mellon University faculty and students working under contract relating to MODS to assist in research project.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tape and drum, and optical scanner forms and computer printouts.

RETRIEVABILITY:

Accessed by Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are retained so long as personnel continue to work at same activity.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Civilian Personnel Management, 800 North Quincy Street, Arlington, VA 22203–1998.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Office of Civilian Personnel Management, Department of the Navy, Washinton, DC 22203–1998 or to the head of the Navy activity at which the individual is or was employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems notices. Written requests for information must contain full name of individual, current verbal information that could be verified.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records contains information about themselves should address written inquires to the Director, Office of Civilian Personnel Management, Department of the Navy, Washinton, DC 22203–1998 or to the head of the Navy activity at which the individual is or was employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems notices. Written requests for information must contain full name of individual, current verbal information that could be verified.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and for contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

First line supervisors and Personnel Automated Data System (PADS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N12300–1

SYSTEM NAME:

Employee Assistance Program Case Record System (51 FR 18215, May 16, 1986).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete line one and substitute with "Office of Civilian Personnel Management." In line four, delete the word "Command" and substitute with "Center."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In line one, delete the words "Chief of Naval Operations (OP–14), and substitute with "Office of Civilian Personnel Management."

* * * * *

N12300–1

SYSTEM NAME:

Employee Assistance Program Case Record System.

SYSTEM LOCATION:

Office of Civilian Personnel Management, Department of the Navy and Designated Contractors; Navy Civilian Personnel Command (NCPC); NCPC Field Division; and, Navy staff, headquarters, and field activities employing civilians. Official mailing addresses are published as an appendix to the Navy's compilation of systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian employees in appropriated and non-appropriated fund activities who are referred by management for, or voluntarily request, counseling assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

System is comprised of case records on employees who are patients (counselee) which are maintained by individual counselors and consist of information on condition, current status, and progress of employees or dependents who have alcohol, drug, emotional, or other personal problems,

including admitted or urinalysis-detected illegal drug abuse.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7301; 42 U.S.C. 290dd–3 and 290ee–3, Pub. L. 100–71; E.O. 12564; and E.O. 9397.

PURPOSE(S):

To record counselor's observations concerning patient's condition, current status, progress, prognosis and other relevant treatment information regarding patients in an employee assistance treatment facility.

Used by the Navy counselor in the execution of his/her counseling function as it applies to the individual patient.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In order to comply with provisions of 5 U.S.C. 7301 and 42 U.S.C. 290dd–3 and 290ee–3, the Office of the Secretary of Defense "Blanket Routine Uses" do not apply to this system of records.

Records in this system may not be disclosed without prior written consent of such patient, unless the disclosure would be:

(a) To medical personnel to the extent necessary to meet a bona fide medical emergency;

(b) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, and individual patient in any report of such research, audit, or evaluating, or otherwise disclose patient identities in any manner; and

(c) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case records are stored in paper file folders.

RETRIEVABILITY:

By employee name or by locally assigned identifying number.

SAFEGUARDS:

All records are stored under strict control. They are maintained in spaces accessible only to authorized persons, and are kept in locked cabinets.

RETENTION AND DISPOSAL:

Paper records are destroyed five years after termination of counseling. Distruction is by shredding, pulping, macerating, or burning.

Electronic records are purged of identifying data five years after termination of counseling. Aggregate data without personal identifiers is maintained for management/statistical purposes until no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Civilian Personnel Management, 800 North Quincy Street, Arlington, VA 22203–1998 and employee assistance program administrators at Department of the Navy staff, headquarters, and field activity levels. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Office of Civilian Personnel Management, 800 North Quincy Street, Arlington, VA 22203–1998 or to the appropriate employee assistance program administrator. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records. The request should contain the name, approximate period of time, by date, during which the case record was developed, and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves continued in this system of records should address written inquiries to the Director, Office of Civilian Personnel Management, 800 North Quincy Street, Arlington, VA 22203–1998 or to the appropriate employee assistance program administration. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Patient, counselors, supervisors, co-workers or other agency or contractor-employee personnel, private individuals to include family members of patient and outside practitioners.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N12771–1

SYSTEM NAME:

Employee Grievances, Discrimination, Complaints, and Adverse Action Appeals (51 FR 18217, May 16, 1986).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

In line seven, delete the words "Examiners' reports" and substitute with "administrative judges' reports." In line nine, delete the word "BUPERS" and substitute with "Naval Military Personnel Command."

* * * * *

PURPOSE(S):

In line two, after the phrase "adjudicative cases", and ", Office of Civilian Personnel Management (OCPM),". In lines fourteen and twenty, delete the words "Examiner's reports" and replace with "administrative judges' reports."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Add the following paragraph to the end of the entry "Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The Department of the Navy's "Blanket Routine Uses" do not apply to these records.

* * * * *

N12771–1

SYSTEM NAME:

Employee Grievances, Discrimination Complaints, and Adverse Action Appeals.

SYSTEM LOCATION:

Employee Appeals Review Board, Ballston Tower 2, 801 N. Randolph Street, Arlington, VA 22203–1998.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former and present civilian employees of the Department of the Navy, and applicants for employment with the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

The case files contain background material on the act or situation complained of; the results of any investigation including affidavits and depositions; records of personnel actions involved; transcripts of hearings held; administrative judges' reports of findings and recommended actions; advisory memoranda from the Chief of Naval Operations, Navy Military Personnel Command, Department of Defense, Systems Commands; Secretary of the Navy decisions; reports of actions taken by local activities; comments by the Employee Appeals Review Board (EARB) or local activities on appeals made to the Equal Employment Opportunity Commission (EEOC); EEOC decisions, Court decisions, Comptroller General decisions. Brief summaries of case files are maintained on index cards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1301, 3301, 3302, 7151–7154, 7301, and 7701.

PURPOSE(S):

This information is used by the EARB to adjudicate cases. Systems Commands, the Chief of Naval Operations, Office of Civilian Personnel Management (OCPM), and Naval Civilian Personnel Command (NCPC) are internal users for informational/implementational purposes. Individual members acting on behalf of the individual involved are supplied with copies of decisions and other appropriate background material. Grievants and appellants are furnished Secretary of the Navy decisions, with copies to their representatives. EEO complainants are furnished Secretary of the Navy (SECNAV) decisions, with copies of the hearing transcripts and administrative judges' reports; complainants' representatives are provided copies of SECNAV decisions on grievances and appeals. Activities involved in EEO complaints are provided copies of SECNAV decisions, hearing transcripts, and administrative judges' reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To officials and employees of the Equal Employment Opportunity Commission to adjudicate cases.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of record systems also apply to this system.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the report pertains. The Departent of the Navy's "Blanket Routine Uses" do not apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and index cards.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Classified material is kept in a locked safe. Other materials are kept in file cabinets within the EARB Administrative Offices. Access during business hours is controlled by Board personnel. The office is locked at the close of business; the building in which the office is located employs security guards.

RETENTION AND DISPOSAL:

Case files maintained for one year and sent to the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409; and maintained for four years. EEOC decisions and index cards are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Council of Personnel Boards, Ballston Tower 2, 801 N. Randolph Street, Arlington, VA 22203–1998.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Naval Council of Personnel Boards, Ballston Tower 2, 801 N. Randolph Street, Arlington, VA 22203–1998. The requester must provide full name, employing office, and appropriate identification card.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Naval Council of Personnel Boards, Ballston Tower 2, 801 N. Randolph Street, Arlington, VA 22203–1998. The requester must provide full name, employing office, and appropriate identification card.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211,5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in the file is obtained from former and present civilian employees of the DON, applicants for employment with the DON, employing activities, EEOC, NCPC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N12930–1

SYSTEM NAME:

Industrial Relations Personnel Records (51 FR 18218, May 16, 1986).

CHANGES:

* * * * *

SYSTEM LOCATION:

In lines two and three, delete the words "Fort Wadsworth" and substitute with "Naval Station New York Staten Island". In line four, delete "Central Offices".

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete the words "and 10 U.S.C. 5031" and add ", Departmental Regulations and E.O. 9397."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In lines two and three, delete the words "Fort Wadsworth" and substitute with "Naval Station New York Staten Island". In lines four and five, delete "Manager, Recruitment and Employment (IRD3)" and substitute with "Workforce/Planning and Administrative Support Branch". In lines six and seven, delete the words "Fort Wadsworth" and substitute with "Naval Station New York Staten Island".

* * * * *

SYSTEM NAME:

Industrial Relations Personnel Records.

SYSTEM LOCATION:

Commander, Navy Resale and Services Support Office, Naval Station New York Staten Island, Staten Island, NY 10305–5097 (for all Navy Exchanges). Personnel records of employees of the central office and in the Navy Resale System activities employing Civilians paid from non-appropriated funds.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees, former civilian employees, and applicants for employment with the Navy Resale and Services Support Office and Navy Exchanges located worldwide. Employee categories paid from non-appropriated funds are regular full time, regular part-time, temporary full time, temporary part-time and intermittent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel jackets, including but not limited to Personnel Information Questionnaire, Personnel Action; Certification of Medical Examination Indoctrination Checklist; Designation of beneficiary; death benefit; leave records; report of accident; notice of excessive absence and tardiness and warnings; disciplinary actions; certified record of court attendance; certified copy of completed military orders for any annual duty tours with recognized reserve organizations; employee job description; tuition assistance records; examination papers and tests, if any; evidence of date of birth, where required; official letters of commendation; cash register overage/shortage records; report of hearings and recommendations relative to employees grievances; official work performance rating; designation of beneficiary for unpaid compensation; reference check records; applicant files; employee profiles; personnel security information (including copies of NSA and NIS reports); travel requests, travel allowance and claims records; transportation agreements; employee affidavits; privilege card application, work assignments, work performance capability, counseling records, work-related records, training records including courses, type and completion dates; and related data.

Labor and Employee Relations Records include Notices of excessive absence, tardiness and warnings; disciplinary actions; unsatisfactory work performance evaluations; grievances, appeals, complaint and appeal records; reports of potential grievances and appeals; congressional correspondence; investigative reports and summaries of personnel administrative actions; data relating to Quality Salary Increase, Superior Accomplishment Recognition Awards, beneficial suggestions and similar awards; and personnel listings of the aforementioned services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To provide a basis by which an employee or an applicant may be determined to be suitable for employment, transfer, promotion or retention in employment; for verification of employment; to provide a record of travel performed and verification that the employees receive proper remuneration for the travel performed; to insure employees received timely consideration in the processing of work/appraisals and salary increases; for recognition of accomplishments and contributions by employees, and in the processing, administration, and adjudication of discipline, grievances, complaints, appeals, litigation, and program evaluation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To appeals officers and complaints examiners of the Equal Employment Opportunity Commission for the purpose of conducting hearings in connection with employees appeals from adverse actions and formal discrimination complaints.

To a federal agency in response to it's request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security of suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary.

To the National Archives and Records Service (GSA) in records management inspection conducted under authority of 5 U.S.C. 2904 and 2906.

In response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in the pending judicial or administrative proceeding.

To officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters affecting working conditions.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of records systems apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The media in which these records are maintained vary, but include file folders; magnetic tape; disks; punch cards; rolodex files; cardex files; ledgers and printed reports.

RETRIEVABILITY:

Name and/or Social Security Number; employee payroll number.

SAFEGUARDS:

Locked desks in supervisor's office and also, locked cabinets in locked offices supervised by appropriate personnel; supervised computer tape library which is accessible only through the Computer Center (entry to the computer center is controlled by a combination lock known by authorized personnel only; security guards.

RETENTION AND DISPOSAL:

Current employee records remain on file at the appropriate personnel offices; records on former employees are retained for one year and then forwarded to the Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118 for retention of permanent papers and destruction of temporary papers. Applicant files are retained for one year. Navy Exchange records retention standards are contained in the Disposal of Navy and Marine Corps Records Part II, Chapters 3 and 5 in the Navy Exchange Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official is the Commander, Navy Resale and Services Support Office, Naval Station New York Staten Island, Staten Island, NY 10305–5097.

Record Holder is the Manager, Workforce/Planning and Administrative Support Branch (IRD4), Navy Resale and Services Support Office, Naval Station New York Staten Island, Staten Island, NY 10305–5097.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Resale and Services Support Office, Naval station New York Staten Island, Staten Island, NY 10305–

5097. The request should contain full name, Social Security Number, activity where last employed or where last application for employment was filed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requester must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records themselves contained in this system of records should address written inquiries to the Commander, Navy Resale and Services Support Office, Naval Station New York Staten Island, Stanten Island, NY 10305–5097. The request should contain full name, Social Security Number, activity where last employed or where last application for employment was filed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requester must provide proof of identity containing the requester's signature.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determination by the individual concerned are published in Secretary of the Navy Instruction 5211.4; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; current and previous supervisors/employers; other records of the activity concerned; counseling records and comparable papers; educational institutions; applicants; applicant's previous employees; current and previous associates of the employee named by the employee as references; other records of activity investigators; witnesses; correspondents; investigate results and information provided by appropriate investigative agencies of the Federal Government.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(5) and (6), as applicable. For additional information contact the system manager. An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G.

[FR Doc. 89–29335 Filed 12–15–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF84–269–002]

Smith Falls Hydropower; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

December 12, 1989.

On December 1, 1989, Smith Falls Hydropower (Applicant), of 699 E. South Temple, Suite 220, Salt Lake City, Utah 84102, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed hydroelectric facility (FERC P. 8436) will be located on Smith Creek, in Boundary County, Idaho.

The certification for the original application was issued on June 21, 1984 (27 FERC 62,324). The first recertification was issued on October 27, 1987 (41 FERC 62,095). The instant recertification is requested due to a change in ownership and increase in electric power production capacity from 30 MW to 38.15 MW. Title to the facility will be vested in Westinghouse Credit Corporation who will lease the facility to the Applicant.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed by December 27, 1989 and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Secretary.

[FR Doc. 89–29331 File 12–15–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–272–000, et al.]

Consumers Power Company, et al.; Natural Gas Certificate Filings

December 7, 1989.

Take notice that the following filings have been make with the Commission:

1. Consumers Power Co.

[Docket No. CP90–272–000]

Take notice that on November 21, 1989, Consumers Power Company (Consumers), 1945 West Parnall Road, Jackson, Michigan 49201, filed in Docket No. CP90–272–000 an application pursuant to § 284.224 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Consumers agrees to comply with the conditions set forth in § 284.224(e) and understands that any transaction authorized under a blanket certificate shall be subject to the same rates and charges, terms, conditions and reporting requirements that would apply if the transactions were authorized for an intrastate pipeline by subparts C, D, and E of part 284 of the Commission's Regulations.

Comment date: December 28, 1989, in accordance with Standard Paragraph F at the end of this notice.

2. Great Lakes Gas Transmission Co.

[Docket No. CP90–276–000]

Take notice that on November 22, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP90–276–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon natural gas sales service provided by Peoples Natural Gas Company, a division of UtiliCorp United Inc., (Peoples) pursuant to Great Lakes' FERC Gas Tariff, First Revised Vol. No. 1, Rate Schedule G–3, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that by order dated June 15, 1988 in Docket No. CP88-35-000, 43 FERC 62,319 (1988), the Commission granted Great Lakes a certificate of public convenience and necessity to provide to Peoples a firm transportation service of up to 4,052 Mcf per day and permitted Great Lakes to abandon the sales service that is the subject of this application; that the Commisison's order was predicated on the unbundling of People's natural gas sales service; and that Peoples has not executed the firm Transportation Service Agreement authorized by the Commission's order. Great Lakes states that it has notified Peoples of the Commission's order and Great Lakes' willingness to enter into the previously approved agreement.

Great Lakes states that it neither produces nor gathers natural gas; that it purchases Canadian natural gas from TransCanada PipeLines Limited (TransCanada) for resale to Peoples; that the quantities of natural gas purchased from TransCanada correlate to the amounts resold to Peoples; that Peoples negotiates the applicable natural gas pricing directly with TransCanada to Peoples. Great Lakes states that in the recent past, it has unbundled its sales service to contractually recognize and permit former sales customers to negotiate directly with natural gas suppliers, and that Great Lakes currently provides transportation services to such former sales customers.

Great Lakes states that its natural gas purchase arrangements with TransCanada for supplies for Peoples terminate on October 31, 1990; that Peoples' Service Agreement terminates on November 1, 1990; that Great Lakes anticipates a cessation of its gas merchant function after November 1, 1990; and that Great Lakes will continue as a transporter of gas thereafter. Great Lakes states that because its gas merchant function is anticipated to cease at November 1, 1990, and to ensure proper and economic system operation after that date, Great Lakes must project its system requirements after termination of its merchant function.

Great Lakes states that it is hereby offering to Peoples the Transportation Service Agreement previously authorized by the Commission, which must be executed within 90 days of the filing date of the application. In the event that Peoples executes the Transportation Service Agreement, Great Lakes states that is would withdraw this abandonment request and proceed under the order issued in Docket No. CP88-35-000. In the event that Peoples does not execute the agreement in the time provided for, Great Lakes requests that the Commission grant it authority to abandon its FERC Gas Tariff, First Revised Vol. No. 1, Rate Schedule G-3 natural gas sales service to Peoples, effective November 1, 1990.

Great Lakes requests that the Commission issue its order authorizing the abandonment on or before May 1, 1990. Great Lakes states that the May 1, 1990 order date would provide Peoples, if necessary, the opportunity to arrange for alternate sales or transportation services, and would also permit Great Lakes some lead time to determine an appropriate utilization of any released capacity. Great Lakes is not proposing herein to abandon any facilities.

Comment date: December 28, 1989 in accordance with Standard Paragraph F at the end of the notice.

3. Williams Natural Gas Co.

[Docket No. CP90-288-000]

Take notice that on November 29, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-288-000 a request pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Texaco Gas Marketing Company (Texaco), a marketer of natural gas, under WNG's blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to transport, on a firm basis, up to 500 dt equivalent of natural gas on a peak and average day and 182,500 dt equivalent on an annual basis for Texaco. It is stated that WNG would receive the gas at various receipt points on its system in Kansas and Oklahoma, and would deliver equivalent volumes at various points on WNG's system in Kansas, and Missouri. It is explained that the transportation service commenced September 1, 1989, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-462-000.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Southern Natural Gas Co.

[Docket No. CP90-292-000]

Take notice that on November 30, 1989, Southern Natural Gas Company, (Southern) P.O. Box 2563, Birmingham, Alabama 35303-2563, filed in Docket No. CP90-292-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Alabama Power Company (Alabama Power) under the authorization issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern would perform the proposed transportation service for Alabama Power, a end-user of natural gas, pursuant to a service agreement dated September 25, 1989, under Southern's Rate Schedule IT (Service Agreement No. 852050). It is states that the term of the service agreement is effective from September 25, 1989, and shall be in full force and effect for a primary term of one month and shall continue and remain in force and effect for successive terms of one month thereafter until cancelled by either party giving five days written notice to the other party. Southern proposes to transport on a peak day up to 4,500 MMBtu; on an average day 221 MMBtu; and on an annual basis 81,000 MMBtu of natural gas for Alabama Power. Southern proposes to receive the gas at various receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Mississippi, and Alabama for delivery to Alabama Power at a point of interconnection in Etowah County, Alabama. Southern asserts that no new facilities are required to implement the proposed service.

Southern states that it would perform such transportation service for Alabama Power pursuant to its Rate Schedule IT. It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Regulations. Southern commenced such self-implementing service on October 1, 1989, as reported in Docket No. ST90-125-000.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Southern Natural Gas Co.

[Docket No. CP90-294-000]

Take notice that on November 30, 1989, Southern Natural Gas Company (Southern) filed in Docket No. CP90-294-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible gas transportation service for Heath Petra Resources, Inc. (Heath), a gas producer, under Southern's blanket

certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a service agreement dated September 18, 1989, Southern requests authorization to transport up to 100,000 MMBtu of natural gas per day for Heath under Southern's Rate Schedule IT. Southern states that the service agreement is for a primary term of one month with successive terms of one month thereafter unless cancelled by either party. Southern further states that Heath anticipates that only 22,000 MMBtu would transported on an average day and, based thereon, it is estimated that 8,030,000 MMBtu would be transported on an annual basis. Southern proposes to receive the gas at various existing receipt points in Texas, Louisiana, Mississippi, Alabama, offshore Texas, and offshore Louisiana and redeliver the gas to various existing points of delivery in Georgia, South Carolina and Tennessee. Southern advises that the service commenced on October 1, 1989, as reported in Docket No. ST90-121-000, pursuant to § 284.223(a)(1) of the Commission's Regulations.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Co.

[Docket No. CP90-301-000]

Take notice that on December 1, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-301-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Gulf South Pipeline Company (Gulf South), under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United requests authorization to transport a maximum daily quantity of 309,000 MMBtu equivalent of natural gas for Gulf South, with an estimated average daily quantity of 309,000 MMBtu. It is stated that on an annual basis, Gulf South estimates a volume of 112,785,000 MMBtu equivalent of natural gas.

United states that transportation service for Gulf South commenced October 16, 1989, as reported in Docket No. ST90-388-000, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

7. Williams Natural Gas Co.

[Docket No. CP90-303-000]

Take notice that on December 1, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-303-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Mountain Iron & Supply Company (Mountain Iron), under WNG's blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the aplication which is on file with the Commission and open to public inspection.

WNG requests authorization to transport, on firm basis, up to a maximum of 900 dekatherms of natural gas per day for Mountain Iron from receipt points located in Kansas and Oklahoma to delivery points located in Kansas and Missouri. WNG anticipates transporting an annual volume of 328,500 dekatherms.

WNG states that the transportation of natural gas for Mountain Iron commenced October 2, 1989, as reported in Docket No. ST90-464-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to WNG in Docket No. CP86-631-000.

Comment date: January 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Williams Natural Gas Co.

[Docket No. CP90-304-000]

Take notice that on December 1, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-304-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for GasTrak Corporation (GasTrak), all as more fully set forth in the request on file with the commission and open to public inspection.

Williams proposes to transport natural gas for GasTrak, a marketer, on a firm basis, pursuant to a transportation agreement dated October 1, 1989. Williams explains that service commenced October 2, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90-465-000. Williams further explains that the peak day quantity would be 1,825 Dth and that the annual quantity would be 666,125 Dth. Williams explains that it would receive natural gas for the account of GasTrak at receipt points located in Kansas, Oklahoma, and Wyoming and would redeliver the gas at various delivery points in Kansas and Missouri.

Comment date: January 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Transwestern Pipeline Company

[Docket No. CP90-306-000]

Take notice that on December 1, 1989, Transwestern Pipeline Company (Transwestern), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-306-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Arco Natural Gas Marketing, Inc. (Arco), a marketer of natural gas, under Transwestern's blanket certificate issued in Docket No. CP88-133-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the commission and open to public inspection.

Transwestern proposes to transport, on an interruptible basis, up to 50,000 MMBtu per day for Arco. Transwestern states that construction of facilities would not be required to provide the proposed service.

Transwestern further states that the maximum day, average day, and annual transportation volumes would be approximately 50,000 MMBtu, 37,500 MMBtu and 18,250,000 MMBtu respectively.

Transwestern advises that service under § 284.223(a) commenced October 1, 1989, as reported in Docket No. ST90-262,

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. Tennessee Gas Pipeline Co.

[Docket No. CP90-309-000]

Take notice that on December 1, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed an application with the Commission in Docket No. CP90-309-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to modify a metering facility used to measure and deliver

natural gas volumes to National Fuel Supply Corporation (National Fuel), an existing customer, under Tennessee's blanket certificate issued in Docket No. CP82-413-000, all as more fully set forth in the application which is open to public inspection.

Tennessee states that is proposes to modify its Clarence sales meter station in Erie County, New York, by installing an additional 10-inch meter tube to accurately measure and deliver a maximum daily natural gas quantity of 150,000 dekatherms to National Fuel. Tennessee would modify its meter station to facilitate its increased interruptible sales and transportation services to National Fuel. Tennessee also states that National Fuel would reimburse if for the $63,000 estimated modification cost pursuant to their October 20, 1989, reimbursement agreement.

Tennessee proposes no changes in its authorized total daily or annual delivery quantities to National Fuel. Tennessee asserts that its proposed meter station modification is not prohibited by its tariff and that it has sufficient capacity to deliver gas volumes to National Fuel without detriment or disadvantage to any of its other customers.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

11. El Paso Natural Gas Co.

[Docket No. CP90-313-000]

Take notice that on December 1, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP90-313-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Mobil Natural Gas Inc. (Mobil), a broker, under El Paso's blanket certificate issued in Docket No. CP88-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to transport on an interruptible basis up to 51,500 MMBtu of natural gas on a peak day, 51,500 MMBtu on an average day and 18,797,500 MMBtu on an annual basis for Mobil. El Paso states that it would perform the transportation service for Mobil under El Paso's Rate Schedule T-1. El Paso indicates that it would receive the gas at any point of interconnection existing from time to time on El Paso's facilities, except those requiring transportation by others to provide the subject service. El Paso states that it would deliver the gas to points of interconnection located in Texas, Oklahoma, Colorado, and New Mexico.

It is explained that the service commenced October 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-234. El Paso indicates that no new facilities would be necessary to provide the subject service.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

12. Transwestern Pipeline Co.

[Docket No. CP90-314-000]

Take notice that on December 4, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90-314-000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Enron Gas Marketing, Inc. (Enron), a marketer of natural gas, under Transwestern's blanket transportation certificate issued in Docket No. CP88-133-000 on March 1, 1988, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern proposes, pursuant to an agreement dated September 26, 1989, to transport for Enron from various receipt points in Texas and redeliver the gas at Needles, Mohave County, Arizona. Transwestern states that it proposes to transport up to 200,000 MMBtu equivalent of gas per peak day and approximately 150,000 MMBtu and 73,000,000 MMBtu equivalent of gas on an average day and annually, respectively. Transwestern states that transportation service under § 284.223(a) commenced on October 1, 1989, as reported to the Commission in Docket No. ST90-263-000 on October 27, 1989.

Comment date: January 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Columbia Gas Transmission Corp.

[Docket No. CP90-311-000]

Take notice that on December 1, 1989, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90-311-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) to transport natural gas on behalf of Columbia Gas Development Corporation (CGDC), under Columbia's blanket certificate issued in Docket No. CP86-240-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport on an interruptible basis up to 25,000 MMBtu equivalent of natural gas on a peak day, 20,000 MMBtu equivalent on an average day and 3,000,000 MMBtu equivalent on an annual basis for CGDC. It is stated that Columbia would perorm the transportation service under its Rate Schedule ITS. It is asserted that the transportation service would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the service commenced September 1, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-29.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

14. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP90-315-000]

Take notice that on December 4, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-315-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Petrus Oil Company, L.P. (Petrus), a marketer , under the blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated October 10, 1989, under its Rate Schedule IT-1, it proposes to transport up to 50,000 MMBtu per day equivalent of natural gas for Petrus. Northern states that it would transport the gas from multiple receipt points as shown in Appendix "A" of the transportation agreement and would deliver the gas to multiple delivery points also shown in Appendix "A" of the agreement.

Northern advises that service under § 284.223(a) commenced October 10, 1989, as reported in Docket No. ST90-434 (filed November 8, 1989). Northern further advises that it would transport 37,500 MMBtu on an average day and 18,520,000 MMBtu annually.

Comment date: January 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Viking Gas Transmission Co.

[Docket No. CP90-273-000]

Take notice that on December 6, 1989, Viking Gas Transmission Company (Viking) 1010 Milam Street, Houston, Texas 77252, filed in Docket No. CP90-273-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for authorization to restructure its services and for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of others pursuant to Order Nos. 436 and 500, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Viking states that its application is submitted in conjunction with a Stipulation and Agreement (Stipulation) in Docket No. RP89-36-000 which resolves all issues in that proceeding and establishes the rates, terms and conditions under which Viking will provide blanket open-access transportation. Viking states that it will not accept the blanket certificate requested herein prior to the Commission's approval of the Stipulation. In addition, Viking requests that the Commission either declare that § 284.10 of the Regulations does not apply to Rate Schedule CD-2 or waive § 284.10 insofar as it relates to Viking's service to ANR under Rate Schedule CD-2. According to Viking, this relief is necessary to allow it to become an open-access transporter without the exposure to extremely large liabilities for Canadian purchased gas demand charges under contracts for which Viking is a conduit for direct purchases by ANR Pipeline Company (ANR) from TransCanada. While the requested declaration or waiver initially postpones ANR's conversion rights, Viking states that as part of the accommodations made to settle Docket No. RP89-36-000 it will file, prior to the date for comments on the Stipulation, an application under sections 7(b) and 7(c) of the Natural Gas Act (NGA) to abandon its obligations under Rate Schedule CD-2 in stages over a two-year period beginning November 1, 1990, and convert ANR's sales obligations to self-implementing firm transportation on an accelarated scheduled.

Viking also requests pregranted abandonment of its obligations to provide firm sales service and individually certificated firm and interruptible transportation services to the extent that customers elect in the future to convert from firm sales to blanket firm transportation under § 284.10 of the Regulations or from individually certificated transportation arrangements to blanket firm or interruptible transportation. Viking requests that the Commission clarify that the scheduling and curtailment priority of a shipper who converts from individually certificated transportation to self-implementing transportation will not change as a result of a conversion.

Viking also requests blanket certificate and abandonment authority under sections 7(b) and 7(c) of the NGA to allow existing firm sales customers to reduce their firm sales obligations temporarily or permanently by transfer to other firm sales customers. In order to allow opportunity for public comment on individual transactions and specific Commission scrutiny of CD transfers where appropriate, Viking proposes to employ prior notice and protest procedures modeled after the procedures in § 157.205 of the Regulations.

Viking proposes that any firm sales customer under Rate Schedules CR-2 or CRL-2 may notify Viking at any time of its desire to be relieved of all or a portion of its firm sales obligation for one or more months. Viking states that it would then offer the available contract demand to all other Rate Schedule CR-2 or CRL-2 customers, who would submit additional requests for available CD within 30 days after such offer. If Viking is successful in finding new buyers for the available CD, it states that it will execute amendments to the service agreements of the transferror and transferee and will file a request for authorization from the Commission.

Viking states that the general terms and conditions also include a similar program for the non-discriminatory reassignment of firm transportation rights under blanket FT transportation on a first-come, first-served basis. Viking believes that the grant of its request for a blanket certificate will provide the authority necessary to allow non-discriminatory transfers of FT entitlements.

Viking also requests authority to provide limited quantity overrun sales service to Vikings's small sales customers under Rate Schedules CR-2, CRL-2 and SR-2 who historically have depended on interruptible sales gas to meet their requirements during extreme weather conditions. Viking states that this service would be available to its Rate Schedule CR-2, CLR-2 and SR-2 customers and would be limited to 50 percent of the contract demand or maximum delivery obligations of such customers. Viking proposes that its overrun service would be subordinate to firm transportation and firm sales service, but would have a higher priority than other interruptible sales under Rate Schedule I-2 and open-access transportation requested after Viking receives its blanket certificate. Overrun sales would, according to Viking, generally have the same curtailment priority as existing (pre-open-access) interruptible transportation. Additionally, Viking requests authority to revise the quantity limitations on the availability of Rate Schedule SR-2 to 1,000 Dt per day, a level which is above Viking's existing maximum delivery obligations in its service agreements with Rate Schedule SR-2 customers.

Comment date: December 22, 1989, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29332 Filed 12-15-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[ERA Docket No. 88-64-NG]

Boundary Gas, Inc.; Order Amending Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order amending long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order to Boundary Gas, Inc. (Boundary), amending Boundary's authorization to import natural gas from Canada. On August 9, 1982, Boundary was conditionally authorized in DOE/ERA Opinion and Order No. 45 (Order 45), 1 ERA Para. 70,539, to import up to 185,000 Mcf of Canadian natural gas per day for a ten-year period beginning November 1, 1982. The authorization was conditioned upon completion of an environmental review of Boundary's import arrangements. Boundary subsequently reduced the scope of its import project and divided it into two phases. The first phase, Boundary Phase I, involved importing 40,000 Mcf per day commencing November 1, 1984, and continuing until facilities were available for Phase II, at which time 92,500 Mcf per day would be imported. The DOE, after reviewing the environmental impact of the restructured Boundary import project, reaffirmed its decision in Order 45 and removed the condition for the Phase I volumes on February 8, 1984, in DOE/ERA Opinion and Order No. 45-B, 1 ERA Para. 70,560, and for the Phase II volumes on October 10, 1989, in DOE/FE Opinion and Order No. 45-C, 1 FE Para 70,244.

The amended authorization allows Boundary to import up to 92,500 Mcf per day until January 15, 2003, pursuant to an amended Phase II contract. The amended Phase II contract does not change the overall pricing structure of Boundary's import arrangement but does eliminate the Producer fixed cost component from Boundary's demand charge as well as reflect the adoption of a two-part rate by NOVA, an Alberta Corporation which is servicing Boundary. The amended Phase II contract also contains a revised gas supply provision that provides Boundary with specific assurances regarding the deliverability of gas over the term of the import arrangement.

A copy of the order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW. Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 8, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-29359 Filed 12-15-89; 8:45 am]

BILLING CODE 6950-01-M

[FE Docket No. 89-56-NG]

Exxon Corp.; Order Granting Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Exxon Corporation blanket authorization to import up to 73 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 8, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-29360 Filed 12-15-89; 8:45 am]

BILLING CODE 6450-01-M

FARM CREDIT ADMINISTRATION

Final Order Barring Claims, Discharging and Releasing the Farm Credit Bank of Louisville and Canceling Charter of the Federal Land Bank Association of Shelbyville

AGENCY: Farm Credit Administration.

ACTION: Notice.

On December 1, 1989, the Chairman of the Farm Credit Administration Board executed a Final Order barring claims against the Farm Credit Bank of Louisville (FCB) as successor to the Federal Land Bank of Louisville (FLB), arising out of the liquidation of the Federal Land Bank Association of Shelbyville; discharging the FCB; and canceling the charter of the Federal Land Bank Association of Shelbyville. The text of the Final Order is set forth below:

Final Order Barring Claims, Discharging and Releasing the Farm Credit Bank of Louisville and Canceling Charter of Federal Land Bank Association of Shelbyville.

Whereas, on September 17, 1986, the Board of Directors of the Federal Land Bank Association of Shelbyville (Shelbyville FLBA) adopted a resolution placing Shelbyville FLBA in voluntary liquidation contingent upon shareholder approval of a Purchase and Assumption Agreement (Agreement) under which substantially all assets and liabilities of Shelbyville FLBA would be transferred to the Federal Land Bank Association of the Fourth District (Fourth District FLBA) and adopted a Plan of Liquidation (the Plan) outlining the manner in which the liquidation was to proceed;

Whereas, on December 17, 1986, the stockholders of the Shelbyville FLBA approved the Agreement and, on December 22, 1986, the Farm Credit Administration approved the Plan;

Whereas, on December 23, 1986, pursuant to the Agreement, all liabilities of the Shelbyville FLBA were assumed by the Fourth District FLBA, each holder of stock or participation certificates of the Shelbyville FLBA received stock or

participation certificates of the Fourth District FLBA, and all assets of the Shelbyville FLBA were transferred to the Fourth District FLBA, except for cash reserved to pay expenses of the liquidation;

Whereas, effective at the close of business on December 23, 1986, the Farm Credit Administration appointed the Federal Land Bank of Louisville (FLB), predecessor of the Farm Credit Bank of Louisville, as the Receiver of the Shelbyville FLBA, and, pursuant to the Plan, the FLB appointed Rebecca Reed as the Liquidating Agent;

Whereas, all assets of the Shelbyville FLBA have been disposed of in accordance with the Plan;

Whereas, the Shelbyville FLBA has been audited and examined, and the accounts of the Shelbyville FLBA for the period December 23, 1986, through the date of this Order have been approved;

Whereas, in accordance with the Plan and the Agreement, all claims have been paid or provided for, including, without limitation, certain administrative expenses which the Farm Credit Bank of Louisville (as successor to the FLB) has paid; and

Whereas, all claims of creditors and holders of equities of the Shelbyville FLBA shall forever be discharged;

Now, therefore, it is hereby ordered that:

1. All claims of creditors, stockholders, and holders of participation certificates and other equities, and of any other person and/or entities, against the Federal Land Bank Association of Shelbyville, or, to the extent arising out of the actions of the Federal Land Bank of Louisville or its successor, the Farm Credit Bank of Louisville, in carrying out the Plan of Liquidation of the Federal Land Bank Association of Shelbyville, as approved by the Farm Credit Administration on December 22, 1986, against the Federal Land Bank of Louisville, the Farm Credit Bank of Louisville, and the Liquidating Agent, are hereby forever discharged, and the commencement of any action, the employment of a process, or any other act to collect, recover or offset any such claims are hereby forever barred.

2. The accounts of the Federal Land Bank Association of Shelbyville for the period December 23, 1986, through the date of this Order are hereby approved.

3. The Farm Credit Bank of Louisville is hereby finally discharged and released from all responsibility or liability to the Farm Credit Administration or any other person or entity arising out of, related to, or in any manner connected with the administration and liquidation of the Federal Land Bank Association of Shelbyville during the period December 23, 1986, through the date of this Order. The discharge and release of the Liquidating Agent by the Farm Credit Bank of Louisville is hereby approved.

4. The Charter of the Federal Land Bank Association of Shelbyville is hereby canceled.

Signed: December 1, 1989.

Harold B. Steele,

Chairman, Farm Credit Administration Board.

Dated: December 12, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89-29346 Filed 12-15-89; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Fowarder License Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 45 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Choice Transportation Services, Inc., 826 Foster Ave., Bensenville, IL 60106, Officers: David L. Moss, President/Director, Suzette A. Emmons, Secretary.

Shipping Systems Corporation, 12201 S.W. 132 Ct. 2nd, Miami, FL 33186, Officers: Rolando E. Handal, President, Sandra Handal, Director, Sandra Yanitza Handal, Stockholder, Ronaldo V. Handal, Stockholder.

Texas Cargo, 4647 Richmond Ave., Houston, TX 77027, Officer: Elba De Melo, Sole Proprietor.

Sanka International Cargo, 8 Cypress Court, Trophy Club, TX 76262, Officer: James Milton Kaechele, Sole Proprietor.

ABM International Corporation, 388 South Ash Street, P.O. Box 67, Kuna, Idaho 83634, Officer: Ronna L. Martin, President.

Carnisco International Express, Inc., 125 Franklin Ave., Valley Stream, NY 11580, Officer: Louis J. DeMarco, President.

KCC Transport Systems Inc., 15151 S. Main Street, Gardena, CA 90247, Officers: Arthur Lee, President, Jim Kim, Vice President.

J.B. Daman, (USA), Ltd., 2500-A Broening Highway, #100, Baltimore, MD 21224, Officers: Joseph Yongseung Cho, President, Shahid Mahmud, V. President, Young Ja Cho, Secretary/Treasure.

Logistic Distrubtion Systems USA, Inc., 433 Blair Road, Avenel, New Jersey 07001, Officers: Salvatore Salomone, President, Vincenzo Rossi, Vice President, Riccardo Del Mastro, Asst. Vice President, Nisith Mitra, Treasurer.

Idaleen L. Benjamin, 2203 Airport Way South, Suite 110, Seattle, Washington 98134, Officer: Idaleen L. Benjamin, Sole Proprietor.

Steinweg/Puget Sound Warehousing Corporation, World Trade Center—Port of Tacoma, P.O. Box 1375, Tacoma, Washington 98401, Officers: Alexander Wilson, Director/Stockholder, Erik Wentges, Director/Stockholder, John B. Stakenburg, Vice Presient, Lillian M. Wilson, Secretary/Treasurer.

By the Federal Maritime Commission.

Dated: December 13, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-29347 Filed 12-15-89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Ambulatory and Hospital Care Statistics; Meeting

In accordance with the Federal Advisory Committee Act (Pub.L. 92-463), notice is hereby given that the NCVHS Subcommittee on Ambulatory and Hospital Care Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2), of the Public Health Service Act, as amended, announces the following meeting.

Name: NCVHS Subcommittee on Ambulatory and Hospital Care Statistics.

Time and Date: January 18-19, 1990, 9:00 a.m.-5:00 p.m. (both days).

Place: Room 337A-339A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the Subcommittee to receive reports on data systems and research concerned with patient-provider

encounters in ambulatory and hospital care statistics and to consider the need to review and revise the Uniform Hospital Discharge Data Set.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, Room 2-12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone number, (301) 436-7050.

Date: December 12, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Center for Disease Control.

[FR Doc. 89-29355 Filed 12-15-89; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

[BPD-639-N]

Medicare and Medicaid Programs; Organ Procurement and Transplantation Network Rules and Membership Actions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice sets forth the Secretary's interpretation of certain provisions of section 1138 of the Social Security Act. That section requires Medicare and Medicaid participating hospitals that perform organ transplants to be members of and abide by the rules and requirements of the Organ Procurement and Transplantation Network (OPTN) as established by section 372 of the Public Health Service Act. Section 1138 also requires that for organ procurement costs attributable to payments to an Organ Procurement Organization (OPO) to be paid by Medicare or Medicaid, the OPO must be a member of and abide by the rules and requirements of the OPTN. No other entity (for example, a histocompatibility laboratory) is required to be a member of or abide by the rules of the OPTN under the provisions of the statute. This notice states that no rule, requirement, policy, or other issuance of the OPTN will be considered to be a "rule or requirement" of the Network within the meaning of section 1138 unless the Secretary has formally approved that rule. It also provides that no action of the OPTN to deny an applicant or member membership status in the OPTN will be considered effective under section 1138 unless the Secretary has ratified that action.

EFFECTIVE DATE: This notice is effective February 16, 1990.

FOR FURTHER INFORMATION CONTACT: Joan Mahanes, (301) 966-4642.

SUPPLEMENTARY INFORMATION:

I. Background

The Social Security Amendments of 1972 (Pub.L. 92-603) extended Medicare coverage to individuals with end stage renal disease who require dialysis or kidney transplantation. Section 1881 of the Social Security Act (the Act) provides for Medicare payment for kidney transplantation. Medicare also covers certain other organ transplants that HCFA has determined are "reasonable and necessary" under section 1862 of the Act, and will pay for those transplants and related organ procurement services.

The Organ Procurement and Transplantation Network (OPTN) was established under section 372 of the Public Health Service Act, as enacted by the National Organ Transplant Act of 1984 (Pub.L. 98-507), which requires the Secretary to provide by contract for the establishment and operation of the OPTN to—

(A) establish in one location or through regional centers—

(i) a national list of individuals who need organs, and

(ii) a national system, through the use of computers and in accordance with established medical criteria, to match organs and individuals included in the list, especially individuals whose immune system makes it difficult for them to receive organs,

(B) establish membership criteria and medical criteria for allocating organs and provide to members of the public an opportunity to comment with respect to such criteria,

(C) maintain a twenty-four-hour telephone service to facilitate matching organs with individuals included in the list,

(D) assist organ procurement organizations in the distribution of organs,

(E) adopt and use standards of quality for the acquisition and transportation of donated organs, including standards for preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,

(F) prepare and distribute, on a regionalized basis (and, to the extent practicable, among regions on a national basis), samples of blood sera from individuals who are included on the list and whose immune system makes it difficult for them to receive organs, in order to facilitate matching the compatibility of such individuals with organ donors,

(G) coordinate, as appropriate, the transportation of organs from organ procurement organizations to transplant centers,

(H) provide information to physicians and other health professionals regarding organ donation,

(I) collect, analyze, and publish data concerning organ donations and transplants, and

(J) Carry out studies and demonstration projects for the purpose of improving procedures for organ procurement and allocation.

The House Report (H.R. Rep. No. 575, 98th Congress, 1st Session 12 (1983)) which accompanied Public Law 98-507 stated that the Committee intended that the OPTN be a strong, active national network for matching donated organs and for making available to OPOs a variety of services and resources to assist and enhance their operation.

Until the enactment of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509), membership in the OPTN was voluntary. Section 9318 of Public Law 99-509 added a new section 1138 to the Act. Section 1138(a)(1)(B) requires Medicare and Medicaid participating hospitals that perform organ transplants to be members of and abide by the rules and requirements of the OPTN. Section 1138(b)(1)(D) requires that for organ procurement costs attributable to payments to an Organ Procurement Organization (OPO) to be paid by Medicare or Medicaid, the OPO must be a member of and abide by the rules and requirements of the OPTN. Although not required by Federal law, other entities (for example, histocompatibility laboratories) may also choose to be members of the OPTN.

Section 102(c) of the Balanced Budget and Emergency Deficit Control and Reaffirmation Act of 1987 (Pub. L. 100-119) delayed the effective date of section 1138(a) of the Act concerning hospitals from October 1, 1987 to November 21, 1987 and section 4009(g) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) extended the effective date of section 1138(b) of the Act concerning OPOs to April 1, 1988.

Title IV, the Organ Transplant Amendments of 1988 (Pub. L. 100-607), amended section 372 of the Public Health Service Act to require that the OPTN establish membership criteria and subject its policies to public review and comment.

On March 1, 1988 (53 FR 6526), HCFA published final rules that included the requirement that Medicare and Medicaid OPOs and hospitals performing transplants must be members of and abide by the rules and requirements of the OPTN (42 CFR 485.305 and 482.12(c)(5)(ii)) in order to qualify for Medicare or Medicaid payments. There has been no further guidance issued by HCFA or other HHS components concerning what constitutes

a rule or requirement of the Network or what procedures will be used to determine whether an entity is a member of the Network, and, more specifically, no establishment of the process by which the Secretary will approve or disapprove actions of the OPTN and announce these decisions to the public.

Consequently, there is a potential for confusion with OPOs and with hospitals performing transplants concerning the procedures under which OPTN rules will be made and enforced. It also may not be clear whether other entities, such as histocompatibility laboratories, are required to be members of, and abide by the rules of the OPTN. We note that there is no statutory or other requirement for such membership.

The purpose of this general notice is to clarify that OPTN rules and requirements which are mandatory upon Medicare and Medicaid participating hospitals performing transplants and OPOs are subject to the Administrative Procedure Act (APA) requirements, and to announce the Secretary's interpretation of the section 1138 phrase "rules and requirements" of the Network. The provisions of this notice state that the Secretary must review and approve matters proposed by the OPTN contractor to be rules and requirements of the OPTN in order for them to be binding upon hospitals and OPOs and must approve the exclusion of such entities from membership in order for such action to become effective. Generally stated, when the Secretary has approved a rule or requirement of the OPTN, he or she will publish it in the **Federal Register**. To date, no policies or procedures have been approved by the Secretary as binding OPTN rules.

II. Provisions of the Notice

In order to be a rule or requirement of the OPTN, and therefore mandatory or binding on hospitals and OPOs participating in Medicare or Medicaid, the Secretary must have given formal approval to the rule or requirement. Approved rules and requirements will be issued in accordance with the Administrative Procedure Act (5 U.S.C. 501 et seq.). If an OPTN rule or requirement would constitute a "rule" within the meaning of the APA and is not exempt from the publication requirement, it will be published in the **Federal Register**. No hospital will be considered out of compliance with section 1138(a)(1)(B) of the Act or the regulations at 42 CFR 482.12(c)(5)(ii), and no OPO will be considered to be out of compliance with section 1138(b)(1)(D) of the Act or regulations at 42 CFR 485.305 unless the Secretary has given the OPTN formal notice approving the decision to exclude the entity from the OPTN and has also notified the entity in writing.

III. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all OPOs and participating hospitals performing organ transplants are considered to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer whan 50 beds located outside of a Metropolitan Statistical Area.

There are two provisions of this notice. Initially, no rule of the OPTN will be mandatory or binding on hospitals and OPOs participating in Medicare or Medicaid unless and until the Secretary has given formal approval to the rule and it has been published in the **Federal Register**. Secondly, no hospital will be considered out of compliance with section 1138(a)(1)(B) of the Act or regulations at 42 CFR 482.12(c)(5)(ii) and no OPO will be considered to be out of compliance with section 1138(b)(1)(D) of the Act or regulations at 42 CFR 485.305 unless the Secretary has given the OPTN formal notice approving the decision to exclude the entity from the OPTN and has also notified the entity in writing. Section 1138(a)(1)(B) of the Act and 42 CFR 482.12(c)(5)(ii) require hospitals in which organ transplants are performed to be members of the OPTN and abide by its rules and requirements while section 1138(b)(1)(D) of the Act and 42 CFR 485.305 require an OPO to be a member of, have a written agreement with, and abide by the rules and requirements of the OPTN.

The purpose of this notice is to ensure that OPOs and hospitals performing transplants have the opportunity to be apprised of proposed rules of the OPTN that will be considered mandatory for participation in Medicare or Medicaid, to comment on those rules and to have their comments considered in final rulemaking under the Administrative Procedure Act. Any such actions will be analyzed for economic impact prior to publication. This notice does not itself create any requirements under section 1138 of the Act, and therefore has no effect on the economy, beneficiaries, or small entities.

This notice does not meet the $100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this notice is not a major rule under E.O. 12291, and a regulatory impact analysis is not required. In addition, for the reasons stated above, we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on a substanital number of small entities and will not have a significant impact on the operations of a substanial number of rural hospitals. Therefore, we have not prepared analyses for either the RFA or small rural hospitals.

IV. Paperwork Reduction Act

This notice contains no information collection requirements subject to Executive Office of Management and Budget approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(Sec. 1138 of the Social Security Act (42 U.S.C. 132OB-8))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: October 12, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-29341 Filed 12-15-89; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-89-910; FR-2696]

Delegation of Authority Under Section 504 of the Rehabilitation Act of 1973, as amended, and 24 CFR Part 8

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This delegation of authority relates to the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination based on handicap, in programs and activities receiving Federal financial assistance from the Department of Housing and Urban Development (HUD) (24 CFR part 8). This delegation of authority specifically concerns the "reviewing civil rights official;" *i.e.*, the person within HUD assigned to accept appeals from certain determinations of the responsible civil rights official." On May 24, 1988, the Secretary delegated this authority to the Under Secretary (53 FR 20253, June 2, 1988). The Secretary of HUD is now revoking that delegation to the Under Secretary and is delegating to the Assistant Secretary for Fair Housing and Equal Opportunity the authority to act as the "reviewing civil rights official" under 24 CFR part 8. The Assistant Secretary now has the authority both to issue a preliminary finding of noncompliance under section 504 (in the role of "responsible civil rights official" (see 53 FR 20253)) and to review that preliminary finding in light of supplementary information (in the role of "reviewing civil rights official"). Because a review of the preliminary finding must be based on new information which was not known at the time of the initial finding, the current delegation of authority does not create a conflict with respect to the Assistant Secretary's dual roles. In those cases in which a finding of compliance is made, the Assistant Secretary acts only as "reviewing civil rights official;" the "responsible civil rights official" in such cases is the Director of the Office of HUD Program Compliance. This change in the delegation of authority is being made because such authority is more appropriately vested in the Assistant Secretary for Fair Housing and Equal Opportunity, the principal official within the Department responsible for civil rights matters.

FOR FURTHER INFORMATION CONTACT: Eleanor Clagett at (202) 755-5404 (voice) or (202) 426-0015 (TDD). These are not toll free numbers.

Delegation of Authority

The Secretary of Housing and Urban Development revokes the previous delegation to the Under Secretary, and delegates to the Assistant Secretary for Fair Housing and Equal Opportunity, the authority to act as the "reviewing civil rights official" as set forth in 24 CFR part 8, "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development."

Dated: December 7, 1989.

Jack Kemp,

Secretary, Department of Housing and Urban Development.

[FR Doc. 89-29327 Filed 12-15-89; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-965-4230-15; F-73308]

Alaska Native Claims Selection; NANA Regional Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to NANA Regional Corporation, Inc. for approximately 43,722 acres. The lands involved are in the vicinity of the Red Dog Mine in Alaska.

Kateel River Meridian, Alaska (Unsurveyed)

T. 30 N., R. 17 W.
T. 31 N., R. 17 W.
T. 32 N., R. 17 W.
T. 30 N., R. 18 W.
T. 31 N., R. 18 W.
T. 32 N., R. 18 W.
T. 30 N., R. 19 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Times. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until January 17, 1990 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Acting Chief, Branch of Northwest, Adjudication.

[FR Doc. 89-29344 Filed 12-15-89; 8:45 am]

BILLING CODE 9310-JA-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-297]

Certain Cellular Radiotelephones and Subassemblies and Component Parts Thereof; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Nokia Corporation (a/k/a Nokia Oy and AB Nokia Oy), Nokia-Mobira Oy, Nokia, Inc., Nokia-Mobira, Inc., TMC Ltd. (formerly known as Tandy Mobira Communications Corporation), Tandy Corporation, and A&A International.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. S1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 28, 1989.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-252-1802.

Issued: November 28, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-29431 Filed 12-15-89; 8:45 am]

BILLING CODE 7020-02-M

MERIT SYSTEMS PROTECTION BOARD

Establishment of the Advisory Committee on Federal Workforce Quality Assessment

AGENCY: Merit Systems Protection Board.

ACTION: Notice of establishment of an advisory committee.

SUMMARY: This notice is published in accordance with sec. 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) and advises of the establishment of the Advisory Committee on Federal Workforce Quality Assessment. The committee is being established jointly with the Office of Personnel Management. The Chairman of the Merit Systems Protection Board and the Director of the Office of Personnel Management have determined that establishment of this Advisory Committee is in the public interest. The purpose of the Advisory Committee is to provide the opportunity for a wide spectrum of experts to review the various workforce quality assessment efforts underway or contemplated within the Federal Government. The committee will advise the Merit Systems Protection Board and the Office of Personnel Management on the adequacy of those efforts, and suggest alternative approaches or additional initiatives. Agencies, unions, academia, private companies and professional associations will be represented on the Advisory Committee.

EFFECTIVE DATE: January 2, 1990.

FOR FURTHER INFORMATION CONTACT: Katherine Naff, Office of Policy and Evaluation, Merit Systems Protection Board (202) 653-7833.

Dated: December 13, 1989.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 89-29361 Filed 12-15-89; 8:45 am]

BILLING CODE 7400-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Policy Letter on Consultants and Conflicts of Interest; Invitation for Public Comment

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: The Office of Federal Procurement Policy (OFPP) is publishing a Policy Letter dealing with consultants and conflicts of interest.

SUMMARY: This OFPP Policy Letter establishes (a) government-wide policy relating to conflict of interest standards for persons who provide consulting services to the United States Government or to persons who contract with the United States, and (b) procedures to promote compliance with those standards.

The policy is issued pursuant to section 8141 of the 1989 Department of Defense Appropriation Act, Public Law No. 100-463, 102 Stat. 2270-47 (1988) and section 6 of the OFPP Act, codified at 41 U.S.C. 404.

Section 8141 directs that government-wide regulations be promulgated to implement the provisions of this Policy Letter no later than 180 days after the date of issuance of the policy.

Before the issuance of the regulations required by section 8141, the President is empowered to make a determination that the regulations "would have a significantly adverse effect on the accomplishment of the mission of the Department of Defense or other federal government agencies * * *." Submission of a report containing an adverse effect determination to Congress will automatically nullify and void the regulations.

Section 8141 also directs the Comptroller General to report to Congress no later than one year from the date of enactment his assessment of the effectiveness of the regulations prescribed pursuant to the section.

SUPPLEMENTARY INFORMATION: A proposed Policy Letter was published on June 7, 1989, at 54 FR 24435. Twenty-six comments were received by OFPP in response to its request for comments. The following summarizes the major issues raised and explains how OFPP responded.

1. Definition of unfair competitive advantage. Several people requested that the term "unfair competitive advantage" be defined and a definition has been provided. The underlying general concept of the definition is that people should not benefit from exclusive access to information. This is intended to be consistent with and to supplement the provisions of FAR Subpart 9.5, Organizational Conflicts of Interest.

2. Definition of "conflict of interest." One respondent observed that nowhere does the definition of "conflict of interest" make clear that the consultant must be "acting in conflict with a prior and continuing obligation to another party," and that the examples given in section 4(d) of the Policy Letter encompass perfectly permissible activity. We believe, however, that it is sufficient to require "impartial" assistance or advice. The examples given, furthermore, are cited as situations in which there is a potential for conflicts to arise.

Another respondent pointed out that we have provided no standards by which a contractor can reasonably determine whether a possible conflict exists. We have added explanatory language to the definition, but also envision that the writers of the regulations that will implement this Policy Letter will provide further clarification where necessary to permit contractors to make more meaningful "bid/no bid" decisions and to permit contracting officers to make more informed judgments about whether a conflict of interest may be present.

Several respondents pointed out the redundancies in the proposed definition of conflict of interest. Accordingly, we substituted "impartial" for "impartial, technically sound, or objective."

Another suggestion was to make the definition of "conflict of interest" in the Policy Letter consistent with the FAR 9.501 definition. We believe the two definitions are consistent. However, for the Policy Letter, we have relied principally on the definition of conflict of interest provided in 1977 legislation pertaining to the Department of Energy at 15 U.S.C. 789 and 42 U.S.C. 5918. Furthermore, FAR Subpart 9.5 emphasizes restrictions on future

activities, whereas sections 10(e) and 12 of this Policy Letter explicitly authorize contracting officers not to award a contract at all, as opposed to writing restrictions applicable to future activities into a contract to be awarded. (FAR 9.501 provides as follows: An "organizational conflict of interest exists when the nature of the work to be performed under a proposed Government contract may, without some restriction on future activities, (a) result in an unfair competitive advantage to the contractor or (b) impair the contractor's objectivity in performing the contract work.")

3. Providing for contractor standards of conduct. Several respondents questioned provisions relating to internal standards of conduct and codes of ethics. Another objected to the lack of full disclosure afforded firms with such standards. We have reconsidered this portion of the Policy Letter and, based on the comments received, have deleted these provisions.

4. Consistency with Department of Energy conflict of interest regulatory program. The Department of Energy urged OFPP to recognize an exception from the application of the Policy Letter where an agency's conflict of interest program goes beyond the intent and coverage of the proposed Policy Letter or is based on other statute or authority requiring conflict of interest provisions. In formulating our policy we relied heavily on the same statutory authority that is the basis of the Department of Energy's conflict of interest program, so there should not be a conflict between the approach chosen by the Department and this policy. Where the Department is subject to a specific statutory mandate, it must, of course, comply.

5. *Certificate unnecessary.* One respondent objected to calling for the use of a certification. We believe, however, that certification offers a reasonable means for ensuring heightened attention to conflict of interests by both government and industry personnel, in keeping with the intent of the statute.

6. *Clarification of definitions.* Comments received highlight the difference between nondiscretionary technical or engineering services and services that assist in formulation of policy and decisionmaking. One respondent correctly pointed out that our definition of advisory and assistance services appeared to exclude engineering and technical services, when in fact those kinds of services do involve discretionary decisions. Accordingly, we make clear that not all engineering and technical services are included, only those involving this discretionary element.

Thus, a "tech rep" who is engaged to maintain a diesel generator will indeed be rendering a technical service, but he will maintain the equipment according to well established technical standards likely found in a maintenance manual.

These situations are to be contrasted with an engineer's recommending that an XYZ Corporation antitank missile be purchased rather than one produced by the ABC Corporation when he or she has done work for XYZ on antitank missiles in the past.

Similarly, if an accounting firm is hired to install an accounting system already identified in a solicitation, this is distinguishable from its being hired to recommend which system the government should install. A consultant that tests auto emissions for an auto manufacturer provides a different type of service when it advises the Environmental Protection Agency on emission standards for autos.

In all the exclusions provided for there is the underlying belief that they either do not involve the making of highly discretionary decisions or that the potential for abuse, even if present, is not serious. Also, we note the fact that many professionals are governed by strict codes of ethics, as well as the fact that even within a single firm it is possible for informal peer review to play a part in ensuring adherence to established technical principles and procedures. Nonetheless, a sensitivity to conflict of interest issues should guide government and private officers and employees at all times, even when this Policy Letter or other laws or regulations do not impose specific duties. Provisions for exclusions in this Policy Letter are not intended to encourage ways of doing business that are not in accordance with the highest ethical standards. See subsection 6(b) of the Policy Letter.

7. *Reexamine reliance on Circular A-120.* One respondent suggested that in considering how to define advisory and assistance services, we should look at the conceptual problems with Office of Management and Budget Circular A-120, Guidelines for the Use of Advisory and Assistance Services. The respondent contends that the assumptions underlying Circular A-120 are outdated to the extent that the Competition in Contracting Act has injected more competition into the process of acquiring advisory and assistance services.

There is merit to this view and it will be taken into account in considering the recommendations of an inter-agency working group that is studying ways to improve Circular A-120. For the present, the Policy Letter has sought to avoid a proliferation of definitions of "advisory and assistance services" by incorporating by reference the definitions in Circular A-120.

8. *Same or substantially similar.* Respondents expressed concern over the requirement that information would need to be reported about clients when the consultant has rendered "services respecting the same subject matter of the instant solicitation, or substantially similar to it * * *." They believe this will adversely affect consultants who render specialized services relating to a narrow range of activities, as, for example, generic inventory control systems. We have clarified the requirement by changing the language of paragraphs 8(b)(5) and 9(b)(4) of the Policy Letter to require information with respect to "the same subject matter of the instant solicitation, or directly relating to such subject matter * * *." This approach emphasizes the need for more of a connection to the instant solicitation than that inherent in the idea of substantial similarity, and focuses attention on conduct that has the greatest potential for conflicts of interest.

9. *Agency head waivers.* Some respondents requested a different provision for agency head waivers, namely that we provide for a waiver if the services in question are "integral to the operation of a program or system." We did not adopt this approach because we think the concept of integral services is ambiguous. Based on other comments, we have clarified that the waiver authority is to be exercised on a contract-by-contract basis, and only by the head of the agency.

10. *Thresholds, time periods.* We did not adopt the suggestion to lower and make uniform all thresholds provided for in the Policy Letter. Nor did we adopt a suggestion that we raise the thresholds. We have tried to establish thresholds that will allow the government to collect meaningful data yet not burden large numbers of contractors where the risk of abuse is low. As practice dictates, we can revise the thresholds in the future. A related suggestion was made to make the certification provisions apply only to procurements of major systems. We believe this is to be too restrictive a provision. We also did not adopt a suggestion that marketing consultants be required to report on their activities for a period longer than 12 months.

11. Apparently successful offeror. One respondent suggested that we require certificates of others beside the apparently successful offeror. This

would have the advantage of ensuring that contractors address conflict of interest questions at the earliest opportunity and of ensuring that a successful offeror discovered to have a conflict of interest on the verge of being awarded a contract does not delay the procurement unduly if it happens that an award cannot be made to that contractor. Because of the importance of the conflict of interest issue, we believe that contractors already have the incentive to address the issue as early as possible. We have also provided new language in paragraphs 8(c) of the Policy Letter to encourage this. We agree that there is a risk of delay in our approach but we believe the flexibility available in the device of modifying contract language to avoid or mitigate conflicts will reduce that risk. Finally, our approach minimizes the burden on contractors.

12. Reliance on contractor judgments. One respondent questioned our reliance on a form of self-certification in paragraphs 8(c) and 9(b)(5) of the Policy Letter because of the subjectivity involved in such a device. We recognize the validity of this observation but choose not to devise an alternative approach that causes large amounts of raw information to flow to the hands of the contracting officer. We believe the approach selected adequately heightens sensitivity to conflict of interest problems.

13. Three-year option. One respondent suggested that the provision in section 10(f) of the Policy Letter permitting the contracting officer to request up to three years of data is a significant requirement. We agree, but note that these data can only be requested upon approval of the head of the contracting activity. We anticipate that this authority will be sparingly used, and then only for limited periods of time.

14. Prime contractor retention of marketing consultant certificates. One respondent suggested that we provide for the prime contractor to retain the marketing consultant's certificate in its files, similar to the procedure established in section 27a of the OFPP Act, codified at 41 U.S.C. section 423, relating to procurement integrity. We did not adopt this suggestion because we want the marketing consultant's certificate to be addressed to the government and to be retained by the government in the event of a false statement. Also, we want all certificates that contain information relating to any unfair competitive advantage to be delivered to the contracting officer.

15. Paperwork Reduction Act. One respondent suggested that the Policy Letter requires submission of information and is hence an information collection request requiring clearance from the Office of Management and Budget's Office of Information and Regulatory Affairs. While the Policy Letter itself requires no submission of data, the regulations implementing the letter will require Paperwork Reduction Act clearance.

16. Prime contractor's role in processing marketing consultant information. One respondent suggested that the information to be submitted by a marketing consultant be sent to the contracting officer, not the prime contractor. We did not adopt this suggestion because we want the prime contractor to be a participant in the process of watching for unfair competitive advantages on the part of people or firms it might wish to engage. This will require marketing consultants to provide information bearing on any possible unfair competitive advantage they might provide. We anticipate that this requirement will have the effect over time of causing marketing consultants to avoid activities that may lead to unfair competitive advantages. The idea that prime contractors might be tasked to collect information from marketing consultants in sealed envelopes would solve the confidentiality problem but this would effectively remove the prime from the process, the opposite of the result we are trying to achieve.

17. Large consulting organizations. Several respondents pointed out their concerns about how the policies in the Policy Letter will affect large consulting offices that emply many people in many branches around the world, particularly when the branches operate independently of centralized management. They also pointed out that their acounting systems have not been designed to track conflict of interest data. We have tried to define the kind of information we wish contractors to provide so that firms, even large firms, will be able to make reasonable inquiries. Nonetheless, the regulation writers may if they choose, provide for flexibility on the part of such firms, such as limiting the duty to inquire within certain geographical areas, subsidiaries, or work groups, among other things.

DATES: This Policy Letter is effective 30 days from the date of issuance on the first page of the Policy Letter. Because of the necessity for implementing regulations, the Policy Letter is issued in final form now, but will apply only to solicitations issued after the effective date of the regulations. Comments on the Policy Letter must be received by January 17, 1990.

ADDRESSES: Comments should be submitted to the Office of Management and Budget, Office of Federal Procurement Policy, Room 9025, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Richard A. Ong, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC 20503. Telephone (202) 395–6810.

Dated: December 8, 1989.

Allan V. Burman,

Administrator Designate.

December 8, 1989.

Policy Letter 89–1

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Conflict of Interest Policies Applicable to Consultants

1. *Purpose.* The purpose of this Policy Letter is (a) to establish policy relating to conflict of interest standards for persons who provide consulting services to the government and to its contractors and (b) to provide procedures to promote compliance with those standards.

2. *Authority.* This Policy Letter is issued pursuant to section 8141 of the 1989 Department of Defense Appropriation Act, Pub. L. 100–463, 102 Stat. 2270–47 (1988) (hereinafter referred to as "the Act") and section 6 of the Office of Federal Procurement Policy (OFPP) Act, codified at 41 U.S.C. section 404.

3. *Background.* This Policy Letter is intended to implement section 8141 of the Act. That section provides, in part, as follows:

"(a) Not later than 90 days after the date of enactment of this Act, the Administrator of the Office of Federal Procurement Policy shall issue a policy, and not later than 180 days thereafter government-wide regulations shall be issued under the Office of Federal Procurement Policy Act which set forth:

"(1) conflict of interest standards for persons who provide consulting services described in subsection (b); and

"(2) procedures, including such registration, certification, and enforcement requirements as may be appropriate, to promote compliance with such standards.

"(b) The regulations required by subsection (a) shall apply to the following types of consulting services:

"(1) advisory and assistance services provided to the government to the extent necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States;

"(2) services related to support of the preparation or submission of bids and proposals for federal contracts to the extent that inclusion of such services in such regulations is necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States; and

"(3) such other services related to federal contracts as may be specified in the regulations prescribed under subsection (a) to the extent necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States."

4. *Definitions.*

(a) "Advisory and assistance services" means advisory and assistance services as defined in OMB Circular No. A-120, "Guidelines for the Use of Advisory and Assistance Services," dated January 4, 1988, and any amendments thereto. Only those compensated services provided pursuant to nonpersonal service contracts are covered by this Policy Letter.

(1) Such services include—

(i) services provided by individual experts and consultants;

(ii) management and professional support services;

(iii) the conduct and preparation of studies, analyses, and evaluations; and

(iv) engineering and technical services.

(2) *Exclusions.* In addition to the exclusion in OMB Circular A-120, the following services are excluded from the coverage of this Policy Letter:

(i) routine engineering and technical services (such as installation, operation, or maintenance of system, equipment, software, components, or facilities);

(ii) routine legal, actuarial, auditing, and accounting services; and

(iii) training services.

(b) "Agency" means an executive department specified in section 101 of title 5, United States Code; a military department specified in section 102 of such title; and independent establishment as defined in section 104(1) of such title; and a wholly owned government corporation fully subject to the provisions of chapter 91 of title 31, United States Code.

(c) "Conflict of interest" means that condition or circumstance wherein a person is unable or is potentially unable to render impartial assistance or advice to the government because of other activities or relationships with other persons, or wherein a person has an unfair competitive advantage.

The critical element in this definition is the existence of a relationship or potential relationship that might cause an offeror, if awarded a contract, to make recommendations or interpretations that, at the expense of the government, favor the interests of the offeror directly, or those of persons or entities presently or potentially able to confer a benefit on the offeror.

Types of potential conflicts include, but are not limited to, the following:

(1) evaluating a contractor's, or potential contractor's products or services, where the evaluator is or was substantially involved in the development or marketing of those products or services;

(2) serving as a consultant to a contractor seeking the award of a contract (or seeking to be awarded the contract directly) after preparing or assisting substantially in the preparation of specifications, or other significant contract provisions or requirements, to be used in the same acquisition;

(3) serving as a consultant to a contractor seeking the award of a contract (or seeking to be awarded the contract directly) after having access to source selection or proprietary information not available to other persons competing for the contract; and

(4) providing advice and assistance to an agency where such advice and assistance could benefit the contractor's other clients.

(d) An "unfair competitive advantage" exists, in addition to the situations addressed in FAR Subpart 9.5, where a contractor competing for award of any federal contract possesses

(1) proprietary information that was obtained from a government official without proper authorization, or

(2) source selection information that is relevant to the contract but is not available to all competitors, and

such information would assist that contractor in obtaining the contract.

(e) "Marketing Consultant" means any independent contractor who furnishes advice, information, direction, or assistance to any other contractor in support of the preparation or submission of a bid or proposal for a government contract by such contractor. An independent contractor is not a marketing consultant if he or she would be rendering advisory and assistance services pursuant to any of the exclusions in paragraph 4(a)(2), above.

5. *Exemptions.* The following may be exempted from the application of policies and regulations issued under this Policy Letter:

(a) *Intelligence activities.* Services rendered in connection with intelligence activities as defined in section 3.4(e) of Executive Order 12333 or a comparable definitional section in any successor order, or in connection with special access programs; and

(b) *Public interest considerations.* Specific contract actions where the head of an agency grants a waiver on the basis of the public interest.

6. *Policy.* Agencies must comply with the following policies:

(a) Responsibility for identifying and preventing potential conflicts of interst in government contracts is shared among the government contracting officer, the requester of the service, and other government officials with access to applicable information. The responsibility for deciding whether to award a particular contract, however, rests with the government contracting officer;

(b) Prior to contract award, contracting officers shall take appropriate steps to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States with regard to persons who provide advisory and assistance services to the government, and to take steps to avoid or mitigate any conflicts believed to exist; similar actions will be taken with regard to any unfair competitive advantage that marketing consultants provide to contractors;

(c) Federal contracting officers shall require, for contracts covered by this Policy Letter, that the apparent successful offeror provide certified information describing the nature and extent of any conflicts of interest that may exist with respect to the proposed award. Marketing consultants shall also be required to certify that they have provided no information to the contractor employing them that would give the contractor an unfair competitive advantage;

(d) Federal procurement officials shall encourage contractors to consider carefully the potential for conflicts of interest in all of their activities associated with federal procurement, and shall be sensitive to the appearance of conflicts of interest in any contracting actions; and

(e) Federal procurement regulations that implement this policy and address conflicts of interest shall take into account the need to (1) encourage participation of highly qualified persons and firms in federal procurement programs; (2) enhance and safeguard the Nation's industrial base; (3) promote full and open competition in the award of government contracts; and (4) improve the overall effectiveness and efficiency of the government's procurement programs.

7. *Responsibilities of the Defense Acquisition Regulatory Council and Civilian Agency Acquisition Council.* The Councils shall promulgate the government-wide regulations specified in section 8141 of the Act within 180 days of the effective date of this Policy Letter. Such regulations shall conform to the policies established herein. Only solicitations issued after the effective date of the regulations are affected by these policies.

8. *Responsiblities of prime contractors employing marketing consultants.* An individual or firm that employs, retains, or engages one or more marketing consultants in connection with a federal acquisition must submit to the contracting officer, with respect to each marketing consultant, the certificates described below, if the individual or firm is notified that it is the apparent successful offeror.

(a) *Certificate required.* No certificates are required for contracts of $200,000 or less. For contracts over $200,000, the contractor must file the certificate described below with respect to each marketing consultant, or provide a written statement to the contracting officer giving the reasons why no such certification can be made. The reasons given must be satisfactory to the contracting officer as to why such certificate cannot be made.

(b) *Contents of certificate.* The certificate to be submitted must contain the following:

(1) the name of the agency and the number of the solicitation in question,

(2) the name, address, telephone number, and federal taxpayer identification number of the marketing consultant;

(3) the name, address, and telephone number of a responsible officer or employee of the marketing consultant who has personal knowledge of the marketing consultant's involvement in the contract;

(4) a description of the nature of the services rendered by or to be rendered by each marketing consultant;

(5) based on information provided to the contractor by the marketing consultant, if any marketing consultant is rendering or, in the 12 months preceding the date of the certificate, has rendered services respecting the same subject matter of the instant solicitation, or

directly relating to such subject matter, to the government or any other client (including any foreign government or person), the name, address, and telephone number of the client or clients, and the name of a responsible officer or employee of the marketing consultant who is knowledgeable about the services provided to such client(s), and a description of the nature of the services rendered to such client(s);

(6) a statement that the person who signs to certificate for the prime contractor has informed the marketing consultant of the existence of this Policy Letter and associated regulations; and

(7) the signature, name, title, employer's name, address, and telephone number of the persons who signed the certificates for both the prime contractor and the marketing consultant.

(c) *Marketing consultant certificate.* In addition, the prime contractor will forward to the contracting officer a certificate addressed to the government and signed by the marketing consultant that (i) such marketing consultant has been told of the existence of the regulations implementing this Policy Letter and (ii) such marketing consultant has made inquiry, and to the best of his or her knowledge and belief, he or she has provided no unfair competitive advantage to the prime contractor with respect to the services rendered or to be rendered in connection with the solicitation, or that any unfair competitive advantage that, to the best of his or her knowledge and belief, does or may exist, has been disclosed to the prime contractor. Prime contractors may request such a certificate from a marketing consultant, or make inquiries of any marketing consultant, at any time they negotiate for the marketing consultant's services, or afterwards, until an award is made, to satisfy themselves that the marketing consultant has provided no unfair competitive advantage.

9. *Responsibilities of contractors providing advisory and assistance services.* Those individuals or firms providing advisory and assistance services to the government must submit to the contracting officer the certificate or certificates described below if the individual or firm is notified that it is the apparent successful offeror.

(a) *Certificate required.* No certificates are required for contracts of $25,000 or less. For contracts over $25,000, the certificate described in (b), below, must be filed or a written statement provided to the contracting officer giving the reasons that no such certification can be made. The reasons given must be satisfactory to the contracting officer as to why such certificate cannot be made.

(b) *Contents of the certificate.* The certificate must contain the following:

(1) name of the agency and the number of the solicitation in question;

(2) the name, address, telephone number, and federal taxpayer identification number of the apparent successful offeror,

(3) a description of the nature of the services rendered by or to be rendered on the instant contract;

(4) if, in the 12 months preceding the date of the certification, services were rendered to the government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter, the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client. The agency and contract number under which the services were rendered must also be included, if applicable;

(5) a statement that the person who signs the certificate has made inquiry and that, to the best of his or her knowledge and belief, (a) no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract, or (b) that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated in writing to the contracting officer or his or her representative; and

(6) the signature, name, employer's name, address, and telephone number of the person who signed the certificate.

10. *Responsibilities of Executive Branch Agencies.*

(a) *Maintenance of data files.* Each agency must maintain the certificates described by this Policy Letter in the contract file. Agencies may extract and categorize such information from these files and consolidate them in a central registry, as appropriate, subject only to the requirement to safeguard information (1) as requested by the submitter of the certificate as confidential, sensitive, privileged, proprietary, or otherwise not releasable, or (2) based on independent agency determinations not to release the information pursuant to the Freedom of Information Act, or other authority.

(b) *Availability of data.* Certificates must be made available to department or agency contracting officers and their superiors, advisors, or their designees, as well as to inspectors general and government audit officials.

(c) *Nondisclosure of information.* Agencies and departments must protect, to the fullest extent permitted by law, all sensitive business and other information submitted pursuant to any policy devised or regulation promulgated pursuant to the Act. Contractors and consultants must take care to identify what information is not releasable. Opportunity to so mark such information shall be afforded to the submitter of the information at any time.

(d) *Preaward conflict of interest analysis; special contract provisions.* Agency officials must, before an award of a contract is made, determine whether a conflict of interest exists with regard to those providing advisory and assistance services to the government, or whether an unfair competitive advantage exists with respect to services provided by a marketing consultant in connection with a particular contract action. In performing this function, they may use (a) information from any certificates or statements previously submitted or submitted with the bid or offer in question and (b) any other substantive information available to them. The contracting officer shall award the contract to the apparent successful offeror unless a conflict of interest or unfair competitive advantage is believed to exist that cannot be avoided or mitigated. Finally, before the contracting officer decides not to award a contract based on conflict of interest considerations, he or she shall notify the prime contractor, or the contractor rendering advisory and assistance services, and provide a reasonable opportunity to respond. Where the contracting officer finds that it is in the best interest of the United States to award the contract notwithstanding such conflict or unfair competitive advantage, the contract file should be documented to reflect the basis for that finding.

(e) *Other information.* This Policy Letter does not prohibit contracting officers from requesting other information relevant to the goals of this Policy Letter. In addition, in special cases, and if approved by the head of the contracting activity, the contracting officer may request that the certificates described above, be made with respect to a period as long as, but no longer than, 36 months preceding the date of the certificate.

11. *Responsibilities of the Federal Acquisition Regulatory Council.* All government-wide regulations to be issued pursuant to section 8141 of the Act will be provided to the Federal Acquisition Regulatory Council for review not less than thirty days prior to publication in the **Federal Register** for public comment.

12. *Remedies.* Persons required to certify in accordance with this Policy Letter's associated regulations but who fail to do so may be determined to be ineligible for award of a contract. Misrepresentation of any fact may result in suspension or debarment, as well as penalties associated with false certifications or such other provisions provided for by law or regulation.

13. *Information contact.* For information regarding this Policy Letter please contact Richard A. Ong, Deputy Associate Administrator, the Office of Federal Procurement Policy, 725 17th Street, N.W., Washington, DC 20503. Telephone (202) 395-6810.

14. *Effective date.* The effective date of this Policy Letter is 30 days from the date of issuance on the first page.

15. *Sunset review date.* This Policy Letter will be reviewed three years from the date of issuance and every three years thereafter to ensure accuracy and relevancy. This review must include a reexamination of the threshold amounts in the light of any changes made in the small purchase amount provided for in FAR Part 13.

Allan V. Burman,

Administrator Designate.

[FR Doc. 89-29358 Filed 12-15-89; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-17261; 812-7427]

Bear, Stearns & Co. Inc.; Notice of Application

December 11, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Bear, Stearns & Co. Inc. ("Bear Stearns" or the "Applicant"), on behalf of Municipal Securities Trust, High Income Series (the "Trust").

Relevant 1940 Act Sections: Exemption requested under section 17(b) from the provisions of section 17(a) and under section 45(a) of the 1940 Act.

Summary of Application: The Applicant seeks an order permitting it as sponsor of the Trust to purchase certain specified securities (the "Bonds") from the Trust and for an order granting confidential treatment for certain information made a part of the application regarding the Bonds.

Filing Date: The application was filed on November 13, 1989.

Hearing or Notifcation of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 8, 1990, and should be accompained by proof of service on the Applicant, in the form of an affidavit or, for lawyers a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Applicant, c/o Michael R. Rosella, Esq., Battle Fowler, 280 Park Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENT INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Trust is an investment company registered under the 1940 Act that is sponsored by the Applicant whose units ("Units") are registered under the Securities Act of 1933. The Trust was formed to provide a high level of interest income (including earned original issue discount) by investing in a fixed, diversified portfolio of long-term tax-exempt bonds.

2. Bonds such as those included in the Trust which generate high levels of interest income are, under most circumstances, subject to greater market fluctuations and risk of loss of income and principal than are investments in lower yielding bonds. Any such fluctuations will affect the value of the portfolio and the Units. Some of the bonds in the Trust are not rated by any national rating organization and the market for such bonds may not be as broad as the market for rated bonds.

3. The Trust has invested in bonds that were purchased on a privately negotiated basis. The Bonds in question were purchased for the Trust in the privately negotiated bond market. The terms of such bonds usually are negotiated between the issuer of the bonds and the purchasers. These types of bonds usually are issued to a small number of institutional investors in smaller dollar amounts than publicly traded bonds available in the marketplace. As a result, the market for such bonds is not extensive because the terms of the instruments may reflect the particular and individualized needs of the original purchasers. In addition, there are fewer dealers making a market in these bonds because it is impractical for most dealers to allocate resources to follow issues structured by other underwriters. Therefore, there may not be a readily available market for such bonds if the Trust decides to sell them from the portfolio. The limited and specialized secondary market maintained by the original underwriter is generally the only market available for resales of these bonds.

Applicant's Legal Analysis

I. Section 17(b)

If a portfolio security is being disposed of by the Trust for credit reasons, the Applicant's exclusion from the market of dealers bidding for the security may be detrimental to the Trust and its Unit holders. To preclude Bear Stearns from bidding for the portfolio security in this specialized market may prevent the Trust from getting the "best price" in the market or force the Trust to retain the security where the Applicant is the only prospective bidder for the Bonds. Neither consequence will be in the best interest of the Unit holders nor in furtherance of the policies of the 1940 Act. The application seeks an exemption from section 17(a) which would permit Bear Stearns, the sponsor of the Trust, to purchase these privately negotiated Bonds according to the terms of the application.

II. Section 45(a)

1. Disclosure of the information regarding the Bonds is neither necessary nor appropriate in the public interest or for the protection of investors. The Unit holders of the Trust will be informed of the sale of the Bonds by the trustee ("Trustee") pursuant to the terms of the Trust's indenture. Therefore, disclosure of this information will not further any interest of the Unit holders.

2. No other public interest would be furthered by the disclosure of this information. While it is important for the SEC to review this information, public disclosure of this information would be inappropriate. The information regarding the Bonds has been obtained at the expense of Bear Stearns and, therefore, should be considered its own proprietary information. By public disclosure, other investors and potential investors will unfairly gain the benefit of this proprietary information belonging to Bear Stearns.

3. The Bonds are being sold by the Trust because their credit quality is no longer consistent with the Trust's credit quality standards. This credit quality determination may not be applicable or appropriate for holders with different investment objectives from those of the Trust. As a significant market maker in these privately negotiated Bonds, Bear Stearns is concerned that public disclosure of this information may have an adverse effect on the value of both the Bonds and privately negotiated bonds generally.

Applicant's Conditions

Applicant agrees that if the requested order is granted it will be expressly conditioned on the following:

1. Before executing any sale of the privately negotiated Bonds to Bear Stearns, the Trust will first obtain such information as it deems necessary to determine the "best price" available with respect to the quantity of the security being sold and, in doing so, the Trustee will be required to advertise the bond on national municipal bond broker wire services to obtain competitive bids. In each instance where other bids are obtained, a determination will be required, based upon the information available to the Trustee, that the price

bid by the Applicant is "better than" the best price bid by the other sources in order for the Trustee to effect the sale with the Applicant. To be considered "better than" that available from other sources, Applicant's bid must be at least a standard minimum prince increment (*i.e.*, at least ⅛th of 1% of principal amount or $1.25 per $1,000 principal amount) better than the best bid from other sources. The Trustee will maintain records with respect to any transactions effected with the Applicant where the Applicant quotes the "best price" to the Trust, including documentation for having obtained bids from other dealers.

2. Before effecting a sale to the Applicant where it is the only bidder and where there are no other bids available, the Trustee will be required to determine whether such price is a "fair prince." Determining whether a price is a "fair price," the Trustee may consider, to the extent possible, price quotations for privately placed securities of comparable maturity and credit quality from dealers who are not making a market in this particular security but are actively engaged in the market making of privately negotiated bonds of the type in question and any other criteria it deems appropriate (*e.g.*, appraisal of the underlying collateral or the net operating income of the project in question). Where appropriate, the factors the Trustee will examine in making the determination that securities are of "comparable maturity and quality" include, but are not limited to, (1) the respective current and projected earnings of the obligors, (2) the balance sheets or financial conditions of the respective obligors, (3) the industry outlooks for the respective obligors, (4) the management of the respective obligors, (5) debt service coverage of the respective obligors, (6) securities of comparable yield, (7) securities with comparable credit characteristics, and (8) securities of comparable maturity. The Trustee will maintain records with respect to any transactions effected with Bear Stearns, where Bear Stearns quotes the only price, and a "fair price", to the Trust, including documentation for having obtained bids from other dealers of comparable securities and any appraisals or records regarding the underlying collateral or obligors.

3. Where the Applicant has repurchased a portion of the Bonds in question from other institutional holders within 30 days of the time the Trust makes its sale of the Bonds, the price at which the Trust sells the Bonds to Bear Stearns will not be less than the highest price paid to any such institutional holder. (This procedure offers further indication that the price at which Bear Stearns would purchase such Bonds is a "fair price" since other independent institutional investors will make judgments that the repurchase price is fair based upon their own arm's-length analysis.)

4. Bear Stearns undertakes and represents that any net profit from future resale of the Bonds, liquidation of underlying collateral or recovery from litigation involving the Bonds would be paid to the Trust from which it was purchased (the Trust's pro rata portion of the amount ultimately realized by Bear Stearns less (i) the price previously paid to the Trust and (ii) the pro rata amount of the out-of-pocket costs incurred in connection with such realization, including real estate brokers' fees, selling expenses, outstanding real estate taxes and legal and other litigation related expenses), thus eliminating the profit possibility from any self-dealing. If the Trust has been completely liquidated at the time of this realization, the net profit will be paid to the Trust's Unit holders of record who received the final liquidating distribution from the Trust.

5. While the determination that the Bonds should be sold from the Trust was made by the Applicant as sponsor, the personnel of Bear Stearns making this decision are not the same personnel that are involved in the underwriting and market making of privately placed municipal securities. The unit investment trust department at Bear Stearns is involved in the selection and purchase of securities on the part of the Trust and has direct involvement in the administration and monitoring of the Trust. The public finance department and the municipal bond department of Bear Stearns perform the underwriting and market marking activities for municipal bonds. The decision to sell a portfolio security by the Trust originates and is made only by the unit investment trust department, although the municipal bond department may have been consulted on the evaluation of a portfolio security's investment quality. No solicitation of the Trust for the security is made by the public finance or municipal bond departments. The public finance and municipal bond departments will not attempt to influence or control in any way the placing of orders to sell the Bonds by the Trust with Bear Stearns.

6. Bear Stearns undertakes to maintain complete and segregated records of all the relevant documentation required under the application and of all necessary support documentation implicit in satisfying the conditions set forth herein or otherwise referred to herein.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29329 Filed 12-15-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17260; File No. 812-7408]

Provident Mutual Life Insurance Company of Philadelphia, et al.

December 11, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for order under the Investment Company Act of 1940 ("Act").

Applicants: Provident Mutual Life Insurance Company of Philadelphia ("Provident Mutual"), Provident Mutual Variable Growth Separate Account ("Growth Account"), Provident Mutual Variable Money Market Separate Account ("Money Market Account") Provident Mutual Variable Bond Separate Account ("Bond Account") Provident Mutual Variable Managed Separate Account ("Managed Account"), (collectively, the "Continuing Accounts"), Provident Mutual Variable Growth Separate Account A ("Growth Account A"), Provident Mutual Variable Money Market Separate Account A ("Money Market Account A"), Provident Mutual Variable Bond Separate Account A ("Bond Account A"), and Provident Mutual Variable Managed Separate Account A ("Managed Account A"), (collectively, the "Combining Accounts").

Summary of Application: Order requested under section 17(b) for exemption from section 17(a).

Summary of Application: Applicants seek an order exempting the restructuring proposed below to the extent necessary to permit the transfer of assets, in the form of shares of stock of the Market Street Fund, Inc., (the "Fund") and liabilities arising in connection with certain scheduled premium variable life insurance contracts of Growth Account A to Growth Account; of Money Market Account A to Money Market Account; of Bond Account A to Bond Account; and of Managed Account A to Managed Account.

Filing Date: The Application was filed on October 6, 1989 and amended on December 6, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m. on January 2, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, Provident Mutual Life Insurance Company of Philadelphia, 1600 Market Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, (202) 272–3027 or Clifford E. Kirsch, Acting Assistant Director, at (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicant's Representations

1. Provident Mutual, a mutual life insurance company, has issued the scheduled premium variable life insurance contracts ("Combining Account Contracts") as well as the single premium and modified premium variable life insurance contracts ("Continuing Account Contracts"). For purposes of the Act, Provident Mutual is the depositor and sponsor of the Combining Accounts and the Continuing Accounts.

2. The Growth Account, Money Market Account, Bond Account, Managed Account and Provident Mutual Variable Zero Coupon Bond Separate Account were established by Provident Mutual as separate investment accounts under Pennsylvania insurance law on October 21, 1985 as funding media for the Continuing Account Contracts. Provident Mutual similarly established the Provident Mutual Variable Aggressive Growth Separate Account on February 21, 1989. The six separate accounts are collectively registered under the Act as a single unit investment trust. The single premium and modified premium variable life insurance contracts are registered separately under the Securities Act of 1933, as amended. The Provident Mutual Variable Zero Coupon Bond Separate Account invests exclusively in units of interest of The Stripped ("Zero") U.S. Treasury Securities Fund, Provident Mutual Series A, a unit investment trust registered under the Act. The remaining five separate accounts each invest exclusively in the shares of a designated investment portfolio of the Fund, described below. Provident Mutual Variable Zero Coupon Bond Separate Account and Provident Mutual Variable Aggressive Growth Separate Account are not involved in the proposed restructuring and, therefore, are not parties to this application.

3. Under Pennsylvania law, the assets of each of the Continuing Accounts attributable to variable life insurance contracts are owned by Provident Mutual for the benefit of owners of, and the persons entitled to payments under, these contracts. Consequently, such assets are not chargeable with liabilities arising out of any other business of Provident Mutual. Income and both realized and unrealized gains and losses from the assets of the separate accounts are credited to or charged against the accounts without regard to the income, gains or losses arising out of any other business Provident Mutual may conduct.

4. The Growth Account A, Money Market Account A, and Bond Account A were established as separate investment accounts under the Pennsylvania insurance law in 1983 and the Managed Account A in 1985 as funding media for the combining Account Contracts. Three of the Combining Accounts were originally organized as separate diversified open-end management investment companies and registered accordingly under the Act. In 1985, these three separate accounts were reorganized into their current unit investment trust form, adding Managed Account A in the process and transferring the investment portfolios to the newly formed Fund. Like the Continuing Accounts, all four accounts collectively registered under the Act as a single unit investment trust.

5. Each of the Combining Accounts, invests exclusively in shares of a designated investment portfolio of the Fund. The assets of the Combining Accounts, like those of the Continuing Accounts, are not chargeable with liabilities arising out of any other business of Provident Mutual, and income, and both realized and unrealized gains and losses are credited or charged against the Combining Accounts without regad to income, gains and losses arising out of any other business Provident Mutual may conduct.

6. The Fund was organized as a Maryland Corporatin on March 21, 1985, and is registered under the Act as an open-end diversified management investment company of the series type. The Fund currently sells one series of its common stock for each of its five investment portfolios to one or more corresponding separate accounts of Provident Mutual. The Continuing Accounts and the Combining Accounts both purchase shares of stock of the Growth Portfolio, Money Market Portfolio, Bond Portfolio and Managed Portfolio.

7. In light of the small size of each of the Combining Accounts and the fact that Provident Mutual no longer offers the Combining Account Contracts for sale, the management and Board of Directors of Provident Mutual have determined that no useful business purpose is served by maintaining two duplicate sets of separate accounts as funding media for its various variable life insurance contracts. Accordingly, Provident Mutual proposes to combine the Combining Accounts with the Continuing Account by transferring the Fund Shares held as assets by each of the Combining Accounts to the Continuing Account which holds as assets Fund shares of the same investment portfolio.

8. On November 20, 1989, Provident Mutual obtained the approval of the Pennsylvania Insurance Commissioner to carry out the proposed restructuring. At the time notice of this application is published in the **Federal Register**, Provident Mutual will notify owners of the Combining Account Contracts in writing of the pending change. Provident Mutual will also pay all expenses incurred in effecting the proposed restructuring. Consistent with the requirements of the Act, state law and the terms of the Combining Account Contracts, Combining Account Contract owners will not be asked to approve the restructuring. As a practical matter, however, no owner's investment under a Combining Account Contract will change as a result of the proposed restructuring.

9. The proposed restructuring will, in effect, result in owners of the Combining Account Contracts having their interests in any of the Combining Accounts exchanged for identical interests in a corresponding Continuing Account. The Continuing Accounts are identical in structure and operation to the Combining Accounts in every way that might affect a Combining Account Contract owner's interest. The number and value of units of interest supporting each of the Combining Account

Contracts in the Combining Accounts will be exactly the same after the proposed restructuring as those supporting the Combining Account Contracts in the Combining Accounts before the restructuring. The size and type of fees deducted from assets supporting the Combining Account Contracts in the Continuing Accounts will remain unchanged after the proposed restructuring from those currently being deducted from the Combining Accounts. The total size of each of the Continuing Accounts after the proposed restructuring will significantly exceed that of the corresponding Combining Accounts before the proposed restructuring.

10. The proposed restructuring will not, in any way, alter the Combining Account Contracts or in any other way change the terms and conditions of a Combining Account Contract owner's interest in the Continuing Accounts from the terms and conditions of his or her current interest in the Combining Accounts. Specifically: (1) Provident Mutual will remain the insurer and guarantor of insurance obligations under the Combining Account Contracts and will provide the same Combining Account Contract owner services after the proposed restructuring as it currently provides; (2) the cash value, cash surrender value, face amount, variable adjustment amount and loan values will be the same under each Combining Account Contract immediately after the proposed restructuring as immediately before the restructuring; (3) the calculation of cash value, cash surrender value, and variable adjustment amounts will be done in the same manner after the restructuring as it is currently done; (4) the exercise of cash value transfers and other privileges under the Combining Account Contracts will remain the same after the proposed restructuring as it currently is; (5) all fees and charges under each Combining Account Contract will remain the same after the restructuring as they currently are; and (6) the tax status of the Combining Account Contracts will be the same after the proposed restructuring as it currently is.

11. In order to reflect the transfer of assets supporting the Contracts to the Continuing Accounts, Provident Mutual will file a new registration statement under the 1933 Act on Form S–6 for the Combining Account Contracts in a timely manner to ensure that it will become effective by the date of the proposed restructuring and file an amendment to the Form N–8B–2 registration statement under the Act for the Continuing Accounts. Once the Form S–6 registration statement becomes effective, Provident Mutual will distribute copies of the prospectus contained therein to owners of the Combining Account Contracts. After the proposed restructuring Provident Mutual will, pursuant to section 8(f) of the Act and Rule 8F–1 thereunder, apply to the Commission for an order declaring that the Combining Accounts have ceased to be an investment company.

12. Because the Combining Accounts and the Continuing Accounts are affiliated persons of each other, the transfer of assets from the Combining Accounts to the Continuing Accounts may involve these entities, acting as principal, in buying and selling securities or other property from or to one another in contravention of section 17(a). Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting transactions from the prohibitions of section 17(a) of the Act.

13. Applicant represents that the terms of the proposed restructuring, as described in this application, are reasonable and fair, including the consideration to be paid and received; do not involve overreaching; are consistent with the investment policies of each of the Combining and Continuing Accounts; and are consistent with the general purposes of the Act.

14. Each of the Continuing Accounts invests exclusively in the shares of the same designated investment portfolio of the Fund as does its Combining Account counterpart. Therefore, to the extent that the investment objectives of these portfolios can be attributed to any of the Combining or Continuing Accounts, each Continuing Account will, by definition, have the same investment objects, policies, restrictions and portfolios after the proposed restructuring as its Combining Account counterpart has before the proposed restructuring. The proposed restructuring will be affected by "combining" each of the Combining Accounts with its twin among the Continuing Accounts by transferring Fund shares from the Combining Account to the Continuing Account. The transfer will occur in conformity with section 22(c) of the Act and Rule 22c–1 thereunder in that the aggregate net asset value of the transferred shares will not change and each Combining Account Contract owner holding units of interest in one of the Combining Accounts will have those units exchanged for units of equal value in the corresponding Continuing Account. The "prices" or values of the exchanged interests under the Contracts will thus be equivalent. In addition, the proposed restructuring will impose no tax liability upon Contract owners or alter the tax status of the Combining Account Contracts. The proposed restructuring will not in any way dilute the interests of the Combining Account Contract owners. Provident Mutual will bear all costs and expenses associated with the proposed restructuring. The Combining Accounts, the Continuing Accounts and the Combining Account Contracts owners will incur no costs or expenses and will not pay any fees or charges as a result of the proposed restructuring. Therefore, no direct or indirect dilution of Combining Account Contract owner interest will occur.

15. Applicants assert that the proposed restructuring will benefit Combining Account Contract owners by consolidating eight separate accounts into four. The restructuring is motivated by efficiencies of administration that will result from the elimination of the Combining Accounts, the continued existence of which serves no reasonable purpose. Provident Mutual expects and intends that Combining Account Contract owners will benefit from the proposed restructuring to the extent that it streamlines record keeping and other administrative operations.

16. Applicants assert that the proposed restructuring is consistent with the general purposes of the Act, as enunciated in the Findings and Declaration of Policy of the Act, particularly, section 1(b)(2). Applicants further assert that the proposed restructuring does not present any of the abuses the Act was designed to prevent or raise issues it was designed to address. Applicants represent that they will carry out the proposed restructuring in a manner appropriate in the public interest and consistent with the protection of investors.

17. Applicants request an order of the Commission pursuant to section 17(b) of the Act exempting the proposed restructuring from the provisions of section 17(a) of the Act. For all reasons stated above, the terms of the proposed restructuring including the consideration to be paid or received, are reasonable and fair to the Combining and

Continuing Accounts and to the Combining Account Contract owners and do not involve overreaching on the part of any person; furthermore, the proposed restructuring is consistent with the policy of each of the Combining Accounts and the general purposes of the Act.

For the Commission, by the Division of Investment Management, pursuant to the delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29330 Filed 12-15-89; 8:45 am]

BILLING CODE 8010-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 241
Monday, December 18, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, December 20, 1989.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue. Bethesda, Maryland.

MATTERS TO BE CONSIDERED:

Open to the Public

1. *Election of Vice Chairman.* The Commission will elect a Vice Chairman for term beginning January 1, 1990 and ending December 31, 1990.

2. *Acetonitrile and Sodium Bromate Petition, PP 88-2.* The staff will brief the Commission on Petition PP 88-2 requesting Child Resistant Packaging for glue removers containing acetonitrile and permanent wave neutralizers containing potassium bromate or sodium bromate.

Closed to the Public

3. *Enforcement Matter OS# 4380.* The staff will brief the commission on enforcement matter OS# 4380.

4. *Compliance Status Report.* The staff will brief the Commissionn on various compliance matters.

For a recorded message containing the latest agenda information, call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Dated: December 13, 1989.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 89-29466 Filed 12-14-89; 2:00 pm]

BILLING CODE 6355-01-M

FEDERAL TRADE COMMISSION:

TIME AND DATE: 2:00 p.m., Thursday, February 22, 1990.

PLACE: Federal Trade Commission Building, Room 532, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions Open to Public:

(1) Oral Argument in Owens-Illinois, Inc., et al. Docket 9212.

Portions Closed to the Public:

(2) Executive Session to follow Oral Argument in Owens-Illinois, Inc., et al. Docket 9212.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Afairs: (202) 326-2179, Recorded Message: (202) 326-2711.

Donald S. Clark,

Secretary.

[FR Doc. 89-29470 Filed 12-14-89; 2:00 pm]

BILLING CODE 6750-01-M

Corrections

Federal Register
Vol. 54, No. 241
Monday, December 18, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Determination of Fees for Sanitation Inspections of Cruise Ships

Correction

In notice document 89-27792 beginning on page 48942 in the issue of Tuesday, Novemer 28, 1989, make the following corrections:

1. On page 48942, in the second column, under **ACTION**, in the sixth line, "extra small" should read "Extra Small".

2. On page 48943, in the second column, in the second line "agreeess" should read "agrees".

3. On the same page, in the same column, in the sixth line "grater" should read "greater".

4. On the same page, in the same column, the table following the third complete paragraph was incorrectly published and is republished below.

Tonnage	Classification	Fee
<3,001 GRT	Extra Small Ship	$624
3,001–15,000 GRT	Small Ship	$1,249
15,001–30,000 GRT	Medium Ship	$2,498
30,001–60,000 GRT	Large Ship	$3,747
>60,000	Extra Large Ship	$4,996

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436 and 442

[Docket No. 89N-0412]

Antibiotic Drugs; Cephalexin Hydrochloride Monohydrate Tablets

Correction

In rule document 89-27763 beginning on page 48859 in the issue of Tuesday, November 28, 1989, make the following correction:

§ 436.367 [Corrected]

On page 48860, in the first column, in § 436.367(c), in the seventh line, "concentration" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS NO. 1138-89]

RIN 1115-AB05

Nonimmigrant Classes Pursuant to the United States-Canada Free-Trade Agreement

Correction

In rule document 89-27536 beginning on page 48575 in the issue of Friday, November 24, 1989, make the following corrections:

§ 214.2 [Corrected]

1. On page 48578, in the second column, in § 214.2(1), above paragraph (17), "(1)" should read "(l)".

2. On the same page, in the third column, in the sixth line, "to" should read "in".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 264

[INS Number: 1247-89]

RIN 1115-AA39

Applicant Processing for the Legalization Program; Conforming Amendments

Correction

In rule document 89-28418 beginning on page 50340 in the issue of Wednesday, December 6, 1989, make the following corrections:

§ 264.1 [Corrected]

1. On page 50341, in the third column, in § 264.1(c)(3)(v)(b), in the first line, the "(b)" should read "(B)".

2. On the same page, in the third column, in § 264.1(c)(3)(v)(c), in the first line, the "(c)" should read "(C)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-218-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

Correction

In proposed rule document 89-28445 beginning on page 50411 in the issue of Wednesday, December 6, 1989, make the following correction:

§ 39.13 [Corrected]

On page 50413, in the first column, in § 39.13(B.2.a.), in the third line, "3,000" should read "3,100"

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-115; Notice 1]

RIN 2137 AB53

Gas Pipeline Operating Above 72 Percent of Specified Minimum Yield Strength

Correction

In proposed rule document 89-28793 beginning on page 50780 in the issue of Monday, December 11, 1989, make the following correction:

On page 50780, in the second column, under **DATES**, in the third line, "March 12, 1989" should read "March 12, 1990".

BILLING CODE 1505-01-D

federal register

Monday
December 18, 1989

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Industrial-Commercial Institutional Steam Generating Units; Amendments to Nitrogen Oxides Performance Testing and Monitoring Requirements; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3679-7]

Standards of Performance for New Stationary Sources; Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule adopts amendments to the sulfur dioxide (SO_2) and particulate matter (PM) emission standards for oil-fired industrial-commercial-institutional steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour).

These amendments, which were proposed on July 6, 1989 (54 FR 28447), (1) revise the definition of very low sulfur oil, and (2) delete the PM emission limit of 43 ng/J (0.10 lb/million Btu) heat input for units that fire very low sulfur oils.

No objections were raised concerning these proposed amendments during the public comment period. In response to suggestions made by the commenters, two minor changes are being incorporated to clarify the amendments. These amendments, therefore, are being promulgated basically as proposed.

DATE: The effective date of this regulation is June 19, 1986.

ADDRESSES: *Docket.* Docket Number A-83-27, containing supporting information used in developing the promulgated revision, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, room M-1500, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter ((919) 541-5251) or Mr. Rick Copland ((919) 541-5265), Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Background

New source performance standards (NSPS) were proposed on June 19, 1986 (51 FR 22384), and were promulgated on December 16, 1987 (52 FR 47826), limiting emissions of SO_2 from coal- or oil-fired industrial-commercial-institutional steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) and limiting emissions of PM from oil-fired industrial-commercial-institutional steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour). Based on new information regarding the sulfur content and PM emissions potential of fuel oils, proposed revisions to the SO_2 and PM emission standards were published in the Federal Register on July 6, 1989 (54 FR 28447).

The national average sulfur content of distillate fuel oil is about 0.3 weight percent, which is equivalent to 0.3 lb SO_2 per million Btu. Consequently, an SO_2 emission rate of 0.3 lb/million Btu was used to distinguish very low sulfur fuel oil, such as distillate fuel oil, from higher sulfur fuel oil in the analyses supporting proposal and promulgation of the standards limiting SO_2 emissions from oil-fired industrial-commercial-institutional steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour).

A review of Department of Energy data, however, indicated that the sulfur content of distillate fuel oil is highly variable. Although the national average sulfur content of distillate fuel oil is about 0.3 weight percent, the actual sulfur content of an individual shipment can range from as low as 0.1 weight percent to as high as 0.5 weight percent depending on such factors as: (1) The season of the year, (2) the geographic location, (3) the crude oil from which the distillate fuel oil is refined, and (4) the extent to which desulfurization or blending is used to produce distillate fuel oil at the refinery.

The maximum sulfur content of distillate fuel oil is limited to 0.5 weight percent through fuel oil specifications adopted by the American Society for Testing and Materials (ASTM). In producing a distillate fuel oil product for sale, refineries meet or exceed these specifications. The use and acceptance of these ASTM specifications is so widespread that the actual sulfur content of a shipment of distillate fuel oil is frequently not reported.

In light of the variability in the sulfur content of distillate fuel oil and the presence of widely accepted ASTM specifications limiting the sulfur content of distillate fuel oil, it seemed appropriate to define very low sulfur fuel oil by the maximum sulfur content of distillate fuel oil as specified by ASTM rather than by the national average sulfur content.

The promulgated standards for oil-fired steam generating units limit PM emissions to 43 ng/J (0.10 lb/million Btu). However, firing very low sulfur fuel oils capable of meeting the SO_2 emission limit discussed above result in PM emissions of 43 ng/J (0.10 lb/million Btu) or less. Thus, for those oil-fired units which fire very low sulfur oil, the imposition of the promulgated PM emission limit achieves no additional PM emission reductions beyond that achieved by SO_2 standards. On the other hand, the PM emission limit imposes additional costs due to the emission source testing requirements associated with the emission limit. Therefore, it did not seem reasonable to require steam generating units firing very low sulfur oil to meet the PM emission limit.

Public comments were solicited on the proposed revisions. Eleven comments were received. The commenters included six utility companies, two chemical companies, one paper company, one oil company, and one State agency. No objections to the amendments were raised. All commenters expressed support for the proposed amendments. Two commenters stated that the proposed amendments are consistent with the commenters' experience.

One commenter stated that, while the proposal is based on the ASTM specification of 0.5 weight percent sulfur, very low sulfur fuel oil is still defined in terms of lb/million Btu. The commenter stated that percent sulfur and lb/million Btu are not exactly equal in all cases and recommended that the definition be clarified so that fuel oils with 0.5 weight percent sulfur meet the definition of very low sulfur fuel oil. For the reasons stated by the commenter, the definition of very low sulfur fuel oil has been clarified to include fuel oils which contain 0.5 weight percent sulfur or less.

One commenter stated that, since the definition of very low sulfur fuel oil is based on the widely accepted ASTM specification for distillate fuel oil, there should be no need to further demonstrate through performance testing and monitoring that ASTM distillate oil meets the standard. Therefore, distillate oil that meets the ASTM specifications has been exempted from performance testing and monitoring requirements in the final standards.

One commenter questioned whether the amendments apply to sources which commenced construction between the original proposal date (June 19, 1986) and the date of the proposed revisions (July 6, 1989). These revised standards apply to all units which commenced construction after June 19, 1986.

II. Administrative Requirements

The docket is an organized and complete file of all the information considered in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking development. The docket system is intended to allow members of the public and industries involved to identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of the basis and purpose of the proposed and promulgated amendments to the NSPS, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (see Clean Air Act, section 307(d)(7)(A); 42 U.S.C. 7607(d)(7)(A)).

Section 317(a) of the Clean Air Act, 42 U.S.C. 7617(a) states that economic impact assessments are required for revisions to standards or regulations when the Administrator determines such revisions to be substantial. These revisions are not substantial; as a result, an economic impact assessment has not been prepared.

Paperwork Reduction Act

The information collection requirements previously approved by OMB for the Industrial-Commercial-Institutional Steam Generating Unit NSPS (40 CFR part 60 subpart Db) remain unchanged as a result of today's promulgated amendment.

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirement of a regulatory impact analysis (RIA). These amendments would result in none of the significant adverse economic effects set forth in section 1(b) of the Order as grounds for finding a regulation to be a "major rule." The amendments are not substantial. Therefore, this action is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act requires the completion of a regulatory flexibility analysis for every rule unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The revised rule would reduce the burden on this source category, and it has already been determined that, in the absence of these revisions, the standards would not affect a substantial number of small entities (52 FR 47841, December 16, 1987).

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 1, 1989.

William K. Reilly,

Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414, and 7601(a).

2. Section 60.41b is amended by revising the following definition:

§ 60.41b Definitions.

* * * * *

"Very low sulfur oil" means an oil that contains no more than 0.5 weight percent sulfur or that, when combusted without sulfur dioxide emission control, has a sulfur dioxide emission rate equal to or less than 215 ng/J (0.5 lb/million Btu) heat input.

* * * * *

3. Section 60.42b is amended by revising the first phrase of paragraph (a), and by revising paragraphs (d), (e) and (f), and by adding paragraph (j) to read as follows:

§ 60.42b Standard for sulfur dioxide.

(a) Except as provided in paragraphs (b), (c), (d), or (j) of this section, * * *

* * * * *

(d) On and after the date on which the performance test is completed or required to be completed under 60.8 of this part, whichever comes first, no owner or operator of an affected facility listed in paragraphs (d) (1), (2), or (3) of this section shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 520 ng/J (1.2 lb/million Btu) heat input if the affected facility combusts coal, or 215 ng/J (0.5 lb/million Btu) heat input if the affected facility combusts oil other than very low sulfur oil. Percent reduction requirements are not applicable to affected facilities under this paragraph.

(1) Affected facilities that have an annual capacity factor for coal and oil of 30 percent (0.30) or less and are subject to a Federally enforceable permit limiting the operation of the affected facility to an annual capacity factor for coal and oil of 30 percent (0.30) or less;

(2) Affected facilities located in a noncontinental area; or

(3) Affected facilities combusting coal or oil, alone or in combination with any other fuel, in a duct burner as part of a combined cycle system where 30 percent (0.30) or less of the heat input to the steam generating unit is from combustion of coal and oil in the duct burner and 70 percent (0.70) or more of the heat input to the steam generating unit is from the exhaust gases entering the duct burner.

(e) Except as provided in paragraph (f) of this section, compliance with the emission limits, fuel oil sulfur limits, and/or percent reduction requirements under this section are determined on a 30-day rolling average basis.

(f) Except as provided in paragraph (j)(2) of this section, compliance with the emission limits or fuel oil sulfur limits under this section is determined on a 24-hour average basis for affected facilities that (1) have a Federally enforceable permit limiting the annual capacity factor for oil to 10 percent or less, (2) combust only very low sulfur oil, and (3) do not combust any other fuel.

* * * * *

(j) Percent reduction requirements are not applicable to affected facilities combusting only very low sulfur oil. The owner or operator of an affected facility combusting very low sulfur oil shall demonstrate that the oil meets the definition of very low sulfur oil by: (1) Following the performance testing procedures as described in § 60.45b(c) or § 60.45b(d), and following the monitoring procedures as described in § 60.47b(a) or § 60.47b(b) to determine sulfur dioxide emission rate or fuel oil sulfur content; or (2) maintaining fuel receipts as described in § 60.49b(r).

4. Section 60.43b is amended by revising paragraphs (b) and (f) to read as follows:

§ 60.43b Standard for particulate matter.

* * * * *

(b) On and after the date on which the performance test is completed or required to be completed under 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts oil (or mixtures of oil with other fuels) and uses a conventional or emerging technology to reduce sulfur dioxide emissions shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter in excess of 43 ng/J (0.10 lb/million Btu) heat input.

* * * * *

(f) On and after the date on which the initial performance test is completed or is required to be completed under 60.8 of

this part, whichever date comes first, no owner or operator of an affected facility that combusts coal, oil, wood, or mixtures of these fuels with any other fuels shall cause to be discharged into the atmosphere any gases that exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity.

* * * * *

5. Section 60.45b is amended by revising paragraph (d) introductory text and adding paragraph (j) to read as follows:

§ 60.45b Compliance and performance test methods and procedures for sulfur dioxide.

* * * * *

(d) Except as provided in paragraph (j), the owner or operator of an affected facility that combusts only very low sulfur oil, has an annual capacity factor for oil of 10 percent (0.10) or less, and is subject to a Federally enforceable requirement limiting operation of the affected facility to an annual capacity factor for oil of 10 percent (0.10) or less shall: * * *

* * * * *

(j) The owner or operator of an affected facility that combusts very low sulfur oil is not subject to the compliance and performance testing requirements of this section if the owner or operator obtains fuel receipts as described in § 60.49b(r).

6. Section 60.46b is amended by revising paragraph (d) introductory text to read as follows:

§ 60.46b Compliance and performance test methods and procedures for particulate matter and nitrogen oxides.

* * * * *

(d) To determine compliance with the particulate matter emission limits and opacity limits under § 60.43b, the owner or operator of an affected facility shall conduct an initial performance test as required under § 60.8 using the following procedures and reference methods: * * *

* * * * *

7. Section 60.47b is amended by revising the first phrase of paragraph (a) and by adding paragraph (f) to read as follows:

§ 60.47b Emission monitoring for sulfur dioxide.

(a) Except as provided in paragraphs (b) and (f) of this section. * * *

* * * * *

(f) The owner or operator of an affected facility that combusts very low sulfur oil is not subject to the emission monitoring requirements of this section if the owner or operator obtains fuel receipts as described in § 60.49b(r).

8. Section 60.49b is amended by adding paragraph (r) to read as follows:

§ 60.49b Reporting and recordkeeping requirements.

* * * * *

(r) The owner or operator of an affected facility who elects to demonstrate that the affected facility combusts only very low sulfur oil under § 60.42b(j)(2) shall obtain and maintain at the affected facility fuel receipts from the fuel supplier which certify that the oil meets the definition of distillate oil as defined in § 60.41b. For the purposes of this section, the oil need not meet the fuel nitrogen content specification in the definition of distillate oil. Quarterly reports shall be submitted to the Administrator certifying that only very low sulfur oil meeting this definition was combusted in the affected facility during the preceding quarter.

[FR Doc. 89-28692 Filed 12-15-89; 8:45 am]
BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 3647-8]

Standards of Performance for New Stationary Sources; Industrial-Commercial Institutional Steam Generating Units; Amendments to Nitrogen Oxides Performance Testing and Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule adopts amendments to the performance testing and monitoring requirements for nitrogen oxides (NO_x) applicable to industrial-commercial-institutional steam generating units with heat input capacities greater than 73 MW (250 million Btu/hour) that fire natural gas, distillate oil, and low nitrogen residual oil and that operate at very low annual capacity factors (i.e., less than 10 percent). In addition, today's promulgated rule exempts from the NO_x emission limit and the NO_x performance testing and monitoring requirements any steam generating units with heat input capacities of 73 MW (250 million Btu/hour) or less that fire natural gas, distillate oil, and low nitrogen residual oil and that operate at very low annual capacity factors (i.e., less than 10 percent).

These amendments were proposed on January 13, 1989 (54 FR 1606) in response to petitions for reconsideration of the original rule promulgated on November 25, 1986 (51 FR 42768). Several comments were submitted on the proposed amendments, and minor changes are being incorporated to the amendments to clarify the performance testing and monitoring procedures.

DATE: June 19, 1984, under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of the rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Incorporation by Reference: The incorporation by reference of certain publications in these standards is approved by the Director of the Office of the Federal Register as of December 18, 1989.

ADDRESSES: *Docket.* Docket Number A-79-02, containing supporting information used in developing the final rule, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, room M1500, first floor, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Copland ((919) 541-5265) or Mr. Fred Porter ((919) 541-5251), Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 1986, standards of performance were promulgated limiting emissions of particulate matter (PM) and NO_x from industrial-commercial-institutional steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) (51 FR 42768). The Utility Air Regulatory Group (UARG) and owners of the William H. Zimmer Generating Station (Cincinnati Gas and Electric Company, Columbus and Southern Ohio Electric Company, and the Dayton Power and Light Company) requested reconsideration of the rule under section 307(d)(7)(B) of the

Clean Air Act. They stated that continuous emission monitoring requirements were not reasonable for very low capacity factor steam generating units that use certain low nitrogen fuels. After reviewing the information submitted by the petitioners, the Administrator decided to use his discretionary authority to amend the rule.

Proposed revisions to the NO_x performance testing and monitoring requirements were published in the **Federal Register** on January 13, 1989 (54 FR 1606). The proposed revisions would require initial performance testing and annual testing of large industrial-commercial-institutional steam generating units (i.e., units with heat input capacities greater than 73 MW (250 million Btu/hour)) that fire natural gas, distillate oil, or low nitrogen residual oil and that operate at very low annual capacity factors (i.e., less than 10 percent). In addition, the proposed revisions would exempt from the NO_x emission limit and the NO_x performance testing and monitoring requirements any smaller steam generating units (i.e., units with heat input capacities of 73 MW (250 million Btu/hour) or less) that fire natural gas, distillate oil, or low nitrogen residual oil and that operate at very low annual capacity factors (i.e., less than 10 percent).

Public comments were solicited on the proposed revisions. Comments requesting changes to the proposed NOx amendments were submitted by the South Carolina Department of Health and Environmental Control; the Georgia Department of Natural Resources; Detroit Edison Company; the Utility Air Regulatory Group; Texaco, Inc.; Houston Lighting and Power Company; and Texas Utilities Electric Company. A summary of the comments and EPA's responses is presented below.

II. Comments Submitted Concerning the Proposed NO_x Amendment

A. Reference Methods Used for NO_x Compliance Testing

1. *Comment:* The South Carolina Department of Health and Environmental Control expressed reservations about using Reference Methods 7 and 7A to meet the proposed performance testing requirements. The commenter stated that Reference Methods 7 and 7A require four NO_x samples to be taken per run at 15-minute intervals, meaning that a 24-hour performance test would require 96 collection flasks. The commenter pointed out that the number of flasks and time spent leak checking them all may be a problem for most sources.

The commenter recommended that Reference Method 7E be used instead of Reference Methods 7 or 7A. If Reference Method 7E were used, the flask problem would be eliminated and a continuous record of the NO_x emissions for the 24-hour test period would be recorded with any trends in emissions easily documented and available for review. The commenter maintained that continuous monitoring would be more informative than four grab samples per hour which represent only 4 minutes per hour of actual emissions.

Response: Compliance with the NO_x standards can be demonstrated using "Method 7, Method 7A, or other approved reference methods, or using a continuous monitoring system." Method 7E, "Determination of Nitrogen Oxides Emissions from Stationary Sources (Instrumental Analyzer Procedure)," is an approved reference method for continuous monitoring of NO_x emissions from utility auxiliary steam generating units. Accordingly, the wording in §§ 60.46b(h)(1) and 60.46b(h)(2) is revised to include Method 7E.

B. Procedures for Determining Maximum Heat Input Capacity

1. *Comment:* The Georgia Department of Natural Resources (Georgia) pointed out that, although the proposed NO_x amendment contains a requirement to conduct a 24-hour test to demonstrate the maximum heat input capacity and to report the results (§§ 60.46b(g) and 60.49b(b)), no method for determining the maximum heat input capacity is given. The commenter stated that specific methods for calculating maximum heat input capacity should be given to ensure consistency in approach.

Response: The method for calculating the maximum heat input capacity of a steam generating unit must be consistent with the 24-hour test procedures in the American Society of Mechanical Engineers (ASME) *Power Test Code* 4.1. These procedures are incorporated by reference in § 60.17(h) of the final amendment.

2. *Comment:* Detroit Edison Company was concerned about the lack of flexibility in the 24-hour maximum heat input capacity demonstration. The commenter stated that, depending on the particular circumstances for a given facility, it may not be possible to demonstrate the maximum heat input capacity at which the steam generating unit will be operated during the first 180 days after initial startup. The commenter maintained that, in some instances, an affected facility could be forced to use an artificially low demonstrated maximum heat input capacity to calculate the annual capacity utilization rate.

As an example, the commenter stated that some auxiliary steam generating units experience peak steam demand from building heating systems only during the winter months. As another example, the commenter mentioned facilities where the normal steam load could increase over time as a phased construction program is completed or as new steam customers are added.

To offer more flexibility than currently allowed, the commenter recommended that the design maximum heat input capacity be used to calculate the annual capacity utilization factor. The commenter suggested two possible alternatives if EPA insists that an affected facility demonstrate its maximum heat input capacity either: (1) Allow the affected facility to repeat the 24-hour maximum heat input capacity demonstration at a later date when there is a higher steam demand or (2) base the annual capacity utilization rate on maximum heat input demonstrations run on steam generating units with the same design as the facility seeking a permit.

Response: Although not stated specifically in the proposed NO_x amendment, an owner/operator is allowed to repeat the 24-hour maximum heat input capacity demonstration test at any time. If a steam generating unit that is retested during a period of high steam demand demonstrates a higher maximum heat input capacity, this higher value would be accepted as long as it does not exceed the manufacturer's rated heat input capacity.

3. *Comment:* The UARG questioned whether a demonstration of maximum heat input capacity is needed. The UARG pointed out that design information provided by the steam generating unit manufacturer was used in establishing the Subpart Db NO_x emission standards (See 51 FR 42776). The UARG maintained that the manufacturer's steam generating unit capacity rating should be reliable. To verify rated capacity, an agency could simply inspect the pressure relief valve that is required by code to be the same as the maximum rated capacity.

Response: There are many different ways that manufacturers can determine the maximum rated capacity of a steam generating unit. Due to this large degree of variability and the incentive provided in the amendment to "over rate" or err on the high side in determining the maximum heat input capacity of a steam generating unit, it is necessary that owners and operators demonstrate the

maximum rated heat input capacity of their auxiliary units.

With regard to inspecting the pressure relief valve, the ASME code requires that the steam generating unit capacity of the pressure relief valve must be at least equal to the maximum heat input capacity of the steam generating unit, and thus provides only a minimum specification. A manufacturer desiring a margin of safety can install a pressure relief valve with a larger capacity, so the value on the pressure relief valve is not necessarily an accurate measure of the maximum rated heat input capacity of the steam generating unit.

4. *Comment:* The UARG urged more flexibility in demonstrating maximum heat input capacity because it may not be possible to perform the 24-hour test within 180 days of startup. The UARG stated that if the steam from a utility auxiliary steam generating unit is used primarily to start the main unit, and a main unit startup does not occur within the initial 180-day period, then the maximum heat input capacity demonstration could not be conducted. The UARG maintained that in such cases the owner or operator could not simply vent the steam to the atmosphere for the 24-hour test period.

The UARG argued that the steam would have to be vented through the steam generating unit's pressure relief valve and the noise resulting from this activity would require some type of sound-muffling device to be installed to comply with EPA/OSHA noise requirements. The UARG also stated that 24-hour venting through a pressure relief valve would most likely destroy the valve. The UARG pointed out that if an operator were to remove the pressure relief valve, he would not be able to operate the steam generating unit because he would be violating steam generating unit codes and insurance requirements.

The UARG argued that even if all of these requirements could be met, a problem would still exist with make-up water. The UARG explained that steam generating units are built as a closed loop design so that the capability of producing deareated and demineralized water is typically only 1 to 5 percent of steam flow. According to UARG, venting steam to the atmosphere during a maximum heat capacity demonstration would require a make-up water capability at or near 100 percent of steam flow. The UARG further stated that steam generating units are simply not designed with such make-up water capabilities and that operation of a steam generating unit for 24 hours using raw water as make-up water would almost certainly damage the unit.

Response: In some cases, owners/operators of steam generating units may feel they are unable to vent steam through the pressure relief valve without damaging the valve in some way. As mentioned by UARG in an earlier comment (See Docket No. A-79-02, Docket Item VI-D-4), one of the functions of a utility auxiliary steam generating unit is to drive feed water pumps and to operate deareators during startup of the main utility steam generating unit. Once normal operating conditions of the main steam generating unit have been achieved, the owner/operator will bleed off some of the steam from the main electric utility steam generating unit and use this steam to operate the pumps and deareators. This method is more efficient than continuing to use the auxiliary unit to perform these functions. As a result, the amount of steam produced by the auxiliary steam generating unit is reduced as soon as the main steam generating unit is able to take over these functions. However, in conducting the 24-hour performance test, the utility auxiliary steam generating unit could remain in operation after the main steam generating unit starts up, continuing to provide steam to the pumps and deareators as it did during startup.

In some cases, a utility steam generating unit operates simultaneously with the main steam generating unit other than during startup. At times of peak energy demand, an owner/operator may bring the auxiliary steam generating unit on line to provide steam for operating the auxiliary equipment, thus allowing the main steam generating unit to provide as much steam as possible to generate electricity or to meet other plant steam demands. By operating the plant steam system in a similar manner, a plant owner/operator could conduct a 24-hour compliance test without venting steam.

5. *Comment:* Houston Lighting and Power Company (HL&P) recommended that a 3-hour test be used instead of a 24-hour test to document maximum heat capacity on typical steam generating units with capacity factors less than 10 percent. The HL&P pointed out that a test of shorter duration would be satisfactory to document maximum heat input and would significantly reduce the cost of the test program. The HL&P thought it unlikely that the steam produced during the test of a low capacity factor unit would be used. The HL&P stated that the cost to conduct this 24-hour test on a 70 MW (240 million Btu/hour) heat input capacity steam generating unit at full load would be $720/hour or $17,280, assuming the price of fuel to be $3/million Btu. The HL&P stated that this cost does not include steam generating unit feedwater treatment costs or additional manpower costs required for an extended test, so the actual cost could be higher.

Response: A 24-hour test is necessary to demonstrate the maximum steady-state heat input capacity of a utility auxiliary steam generating unit. During shorter testing periods, such as a 3-hour test, a steam generating unit can be operated at peak levels that exceed its true maximum steady-state continuous steam generating capacity. Because calculation of the unit's annual capacity factor is based on the maximum steady-state heat input capacity and because a 24-hour test is more representative of this heat input capacity than a 3-hour test, a 24-hour test is required in the final rule.

The costs cited by the petitioners are not unreasonably high. Furthermore, in cases where the steam produced by the auxiliary steam generating unit is used for space heating or other plant purposes (as discussed in the previous response), the effective cost of the compliance test would be lower.

C. Determination of Annual Capacity Factor

1. *Comment:* Detroit Edison noted that to calculate the annual capacity factor for § 60.49b(q), a record of the hourly steam load should be required in § 60.49b(p).

Response: A record of the hourly steam load should be required in § 60.49b(p) in order to calculate the annual capacity factor for § 60.49b(q) and, therefore, such a requirement is being added to § 60.49b(p)(3).

2. *Comment:* The HL&P stated that under the current regulations, steam generating units with capacity factors greater than 10 percent are required to conduct an initial NO_x compliance test where NO_x emissions are monitored for 30 successive steam generating unit days within the first 180 days following startup of the facility. The commenter argued that some steam generating units with low capacity factors (but above 10 percent) would have difficulty completing a 30-day test in a 180-day time period. The commenter estimated that the cost of operating the steam generating unit and venting steam to collect the additional necessary data would be $720/hour. The commenter recommended that such high costs could be avoided by using the first 30 steam generating unit operating days for compliance determination, with no 180 calendar day limit.

Response: Many auxiliary steam generating units with annual capacity factors greater than 10 percent are likely to operate on at least 30 days out of the first 180 days after startup of the unit. These units should be able to obtain the required 30 days of NO_x emissions data without incurring any additional costs. Units that would not normally operate for 30 days out of the first 180 days after unit startup could be operated as described in the response to Comment B.4, above, to obtain the needed emissions data with relatively little economic penalty. Furthermore, performance of this compliance test is required only once over the life of the unit; when compared with costs incurred over the entire life of a unit, the cost of the initial compliance test is minimal. Based on these considerations, requiring units with annual capacity factors greater than 10 percent to acquire 30 days of NO_x emissions data during the first 180 days following startup of the unit is reasonable.

D. Requirements for Initial and Annual Compliance Testing

1. *Comment:* Georgia stated that for facilities covered by § 60.44b(j), the conditions under which the initial 24-hour performance test or the follow-up 3-hour annual test should be conducted are unclear. Specifically, the commenter questioned which fuel or what combination of fuels should be used for the performance test or should individual tests be required on each fuel projected to be used.

Response: The NO_x standards state that owners or operators of an affected facility are required to demonstrate the performance of each fuel fired. A steam generating unit can combust multiple fuels in two ways, either separately or as a mixture. If a steam generating unit combusts the fuels separately, then the owner/operator must conduct a performance test to demonstrate compliance for each individual fuel to be used. If the unit combusts a mixture of fuels, then the owner/operator determines the emission limit for the mixture by multiplying the emission limit for each individual fuel by its fractional portion of the mixture. Only a single performance test, however, is required to demonstrate compliance for the mixture of fuels.

2. *Comment:* Georgia also stated that the wording in the promulgated § 60.45b(b) should be changed so as not to exempt the three-run requirement for the short-term 3-hour test. The commenter stated that for the test methods allowed, replicate runs should be required due to the accuracy and precision of the methods and the length of the test run. The commenter also stated that, for the short-term 3-hour tests, certain conditions on the use of the test methods (e.g., number of runs, sample volume, etc.) such as given in 40 CFR 60.46 should be included.

Response: The wording in § 60.45b(b) should be changed so as not to exempt the three-run requirement for the short-term, 3-hour NO_x test. The three-run requirement would help ensure accuracy and precision of the short-term 3-hour test. Because detailed information (such as sample volume) needed to perform the required reference methods is presented in appendix A of 40 CFR part 60, it is not necessary to provide specific test conditions in the regulation.

3. *Comment:* Georgia also pointed out that according to the promulgated § 60.44b(h), the NO_x standards apply at all times, including startup, shutdown, or malfunction. However, the commenter believed that this provision was only meant to apply when a 30-day rolling average compliance determination is made and recommended that the proposed amendment be changed to state that this paragraph does not apply for the short-term 3-hour tests.

Response: Demonstration of compliance during periods of startup and shutdown is not appropriate when using the short-term 3-hour annual test. A slight revision to the wording of § 60.44(b)(h) is being made.

4. *Comment:* Texas Utilities Electric Company (TU Electric) stated that it is often necessary to start up and shutdown a large main steam generating unit frequently during its first year of operation in order to check out the system and to fine tune the equipment. The commenter pointed out that this could increase the capacity factor of the auxiliary steam generating unit for the first 12 months of operation. The commenter argued that after the first year of operation, the auxiliary steam generating unit's capacity factor would decrease dramatically and then remain at a very low level for the rest of the unit's service life. In view of this, the commenter requested that the auxiliary steam generating unit capacity factor requirement either be waived or increased to 30 percent for the first 12 months of main electric utility steam generating unit operation.

Response: The purpose of the NO_x amendment is to exempt from the NO_x standards small utility auxiliary steam generating units that are used infrequently and exhibit very low annual capacity factor levels. In the case where an auxiliary steam generating unit is used frequently to start up and shut down a large main steam generating unit and the annual capacity factor of the auxiliary unit is 20 percent, 30 percent, or more, for example, its operation is no different than that of any other steam generating unit that operates at similar annual capacity factors. Consequently, if the operation of an auxiliary unit exceeds 10 percent annual capacity factor, it is subject to the same NO_x standards as any other steam generating unit.

In those cases where the annual capacity factor of an auxiliary steam generating unit exceeds 10 percent in its first year of operation but then falls to less than 10 percent in subsequent years, the unit owner/operator could apply for a permit modification, which would restrict operation of the auxiliary steam generating unit to less than 10 percent annual capacity factor. During the first year when the auxiliary steam generating unit is used frequently, the owner/operator could install temporary monitoring equipment, such as a portable continuous emissions monitoring system. This equipment could be removed when the auxiliary steam generating unit's annual capacity factor decreased to less than 10 percent.

In conclusion, the impacts of the standards are considered reasonable for steam generating units operated at annual capacity factors greater than 10 percent.

5. *Comment:* The UARG pointed out that § 60.46b(h)(2) addresses performance testing after the initial performance test. The UARG recommended that, to be consistent with § 60.44b(j), § 60.46b(h)(2) should state that subsequent performance tests are to be conducted over a 3-hour period.

Response: To be consistent with § 60.44b(j), § 60.46b(h)(2) should state that subsequent performance tests are to be conducted over a 3-hour period and, therefore, the wording in § 60.46b(h)(2) is being revised to reflect this change.

E. Applicability of Standards to Units Greater than 250 Million Btu/hour

1. *Comment:* Texaco, Inc., stated that the approach used to determine the significance of NO_x emissions was not justifiable. The proposed amendment stated that estimated NO_x emissions from typical steam generating units operating at 10 percent or less capacity factor would be insignificant when compared to the overall annual tons of NO_x reduction in the fifth year following promulgation of the NSPS. The commenter argued that the 20 tons per year of NO_x reduction from each steam generating unit greater than 73 MW (250 million Btu/hour) heat capacity could not be considered significant unless the

total number of large steam generating units was determined.

Texaco Inc., recommended that all steam generating units firing natural gas, distillate oil, or low nitrogen residual oil and operating at 10 percent or less capacity factor be exempted from both the NO_x emission standards and the monitoring requirements.

Response: The exemption from the NO_x standards for auxiliary steam generating units less than 73 MW (250 million Btu/hour) heat input capacity was established based on the reasonableness of controlling NO_x emissions from such units. The cost of the emission reductions were considered in assessing the reasonableness of the NO_x standards.

Although the total number of auxiliary steam generating units and the annual NO_x emissions from auxiliary steam generating units are small relative to annual NO_x emissions from steam generating units operating at much higher capacity factors, the emissions from both large and small auxiliary steam generating units contribute significantly to the endangerment of public health and welfare, irrespective of the number of units. For large steam generating units, the cost of achieving the standard is considered reasonable and, therefore, these units are subject to the proposed compliance requirement. For small steam generating units, however, the costs were considered excessive compared to potential emission reductions. For that reason, small units with very low capacity factors were exempted from the NO_x standard.

F. Miscellaneous

1. *Comment:* The UARG also stated that § 60.49(q) delineates quarterly reporting requirements for steam generating units meeting the criteria set forth by § 60.44b(j) or § 60.44b(k). However, because Item (1)—results of NO_x emission tests—applies only to those steam generating units meeting the criteria of § 60.44b(j), the UARG suggested that Item (1) be added to Item (4), which also applies only to steam generating units meeting the criteria of § 60.44b(j).

Response: Because those affected facilities that meet the criteria of § 60.44b(k) would not be subject to the NO_x emission limit, they would not be required to perform or to submit results of any NO_x emission test on a quarterly basis. Therefore, § 60.49b(q) is being revised to clarify this point.

2. *Comment:* One commenter noted that § 60.46b(h) of the proposed amendment does not state that the affected facilities described in § 60.44b(k) are exempt from the initial and subsequent performance test requirements.

Response: To clarify this exemption, the wording of § 60.46b(h) is being revised.

III. Administrative Requirements

The docket is an organized and complete file of all the information considered in the development of this regulation. The docket is a dynamic file because material is added throughout the rulemaking process. The docket system is intended to allow members of the public and industries involved to identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of the basis and purpose of the proposed and promulgated amendments to the NSPS and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (See Clean Air Act, section 307(d)(7)(A), 42 U.S.C. 7607(d)(7)(A).

The effective date of this revised regulation is June 19, 1984. Section 317(a) of the Clean Air Act, 42 U.S.C. 7617(a), states that economic impact assessments are required for revisions to standards or regulations when the Administrator determines such revisions to be substantial. These revisions are not subtantial; as a result, an economic impact assessment has not been prepared.

Paperwork Reduction Act

Changes to the information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1088); and a copy may be obtained by writing Sandy Farmer, Information Policy Branch, U.S. Environmental Protection Agency, 401 M Street, SW., (PM-223), Washington, DC 20460 or by calling (202) 382-2468. The public reporting burden for this collecton of information is estimated to be 99,800 hours per year for all respondents.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (PM-223), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2060-1088), Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer, for EPA."

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirement of a regulatory impact analysis (RIA). The EPA has determined that the amendments would result in none of the significant adverse economic effects set forth in section 1(b) of the Order as grounds for finding a regulation to be a "major rule." The amendments are not substantial. The EPA has, therefore, concluded that this action is not a "major rule" under Executive Order 12291. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments form OMB and any EPA response to those comments are in the public docket for this rulemaking.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act requires the completion of a regulatory flexibility analysis for every rule unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The revised rule would reduce the burden on this source category, and it has already been determined that, in the absence of these revisions, the standards would not affect a substantial number of small entities (51 FR 42787 and 42788, November 25, 1986).

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 1, 1989.

William K. Reilly,

Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414, and 7601(a).

§ 60.17 [AMENDED]

2. Section 60.17 is amended by adding paragraph (h) to read as follows:

* * * * *

(h) The ASME *Power Test Codes* 4.1, 8 August 1972, is available for purchase from the following address: The American Society of Mechanical Engineers, 22 Law Drive, Box 2350, Fairfield, New Jersey 07007-2350.

3. Section 60.44b is amended by adding a phrase to the beginning of paragraphs (a) and (b), and by revising paragraph (h), and by adding paragraphs (i), (j), and (k) to read as follows:

§ 60.44b Standard for nitrogen oxides.

(a) Except as provided under paragraph (k) of this section, * * *

(b) Except as provided under paragraph (k) of this section, * * *

* * * * *

(h) For purposes of paragraph (i) of this section, the nitrogen oxide standards under this section apply at all times including periods of startup, shutdown, or malfunction.

(i) Except as provided under paragraph (j) of this section, compliance with the emission limits under this section is determined on a 30-day rolling average basis.

(j) Compliance with the emission limits under this section is determined on a 24-hour average basis for the initial performance test and on a 3-hour average basis for subsequent performance tests for any affected facilities that:

(1) Combust, alone or in combination, only natural gas, distillate oil, or residual oil with a nitrogen content of 0.30 weight percent or less;

(2) Have a combined annual capacity factor of 10 percent or less for natural gas, distillate oil, and residual oil with a nitrogen content of 0.30 weight percent or less; and

(3) Are subject to a Federally enforceable requirement limiting operation of the affected facility to the firing of natural gas, distillate oil, and/or residual oil with a nitrogen content of 0.30 weight percent or less and limiting operation of the affected facility to a combined annual capacity factor of 10 percent or less for natural gas, distillate oil, and residual oil and a nitrogen content of 0.30 weight percent or less.

(k) Affected facilities that meet the criteria described in paragraphs (j) (1), (2), and (3) of this section, and that have a heat input capacity of 73 MW (250 million Btu/hour) or less, are not subject to the nitrogen oxides emission limits under this section.

4. Section 60.45b is amended by revising paragraph (b) to read as follows:

§ 60.45b Compliance and performance test methods and procedures for sulfur dioxide.

* * * * *

(b) In conducting the performance tests required under § 60.8, the owner or operator shall use the methods and procedures in Appendix A of this part or the methods and procedures as specified in this section, except as provided in § 60.8(b). Section 60.8(f) does not apply to this section. The 30-day notice required in § 60.8(d) applies only to the initial performance test unless otherwise specified by the Administrator.

* * * * *

5. Section 60.46b is amended by revising paragraph (c) and adding paragraphs (g) and (h) as follows:

§ 60.46b Compliance and performance test methods and procedures for particulate matter and nitrogen oxides.

* * * * *

(c) Compliance with the nitrogen oxides emission standards under § 60.44b shall be determined through performance testing under paragraph (e) or (f), or under paragraphs (g) and (h) of this section, as applicable.

* * * * *

(g) The owner or operator of an affected facility described in § 60.44b(j) or § 60.44b(k) shall demonstrate the maximum heat input capacity of the steam generating unit by operating the facility at maximum capacity for 24 hours. The owner or operator of an affected facility shall determine the maximum heat input capacity using the heat loss method described in Sections 5 and 7.3 of the ASME *Power Test Codes* 4.1 (see IBR § 60.17(h)). This demonstration of maximum heat input capacity shall be made during the initial performance test for affected facilities that meet the criteria of § 60.44b(j). It shall be made within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial start-up of each facility, for affected facilities meeting the criteria of § 60.44b(k). Subsequent demonstrations may be required by the Administrator at any other time. If this demonstration indicates that the maximum heat input capacity of the affected facility is less than that stated by the manufacturer of the affected facility, the maximum heat input capacity determined during this demonstration shall be used to determine the capacity utilization rate for the affected facility. Otherwise, the maximum heat input capacity provided by the manufacturer is used.

(h) The owner or operator of an affected facility described in § 60.44b(j) that has a heat input capacity greater than 73 MW (250 million Btu/hour) shall:

(1) Conduct an initial performance test as required under § 60.8 over a minimum of 24 consecutive steam generating unit operating hours at maximum heat input capacity to demonstrate compliance with the nitrogen oxides emission standards under § 60.44b using Method 7, 7A, 7E, or other approved reference methods; and

(2) Conduct subsequent performance tests once per calendar year or every 400 hours of operation (whichever comes first) to demonstrate compliance with the nitrogen oxides emission standards under § 60.44b over a minimum of 3 consecutive steam generating unit operating hours at maximum heat input capacity using Method 7, 7A, 7E, or other approved reference methods.

6. Section 60.48b is amended by revising paragraph (b) and adding paragraph (i) to read as follows:

§ 60.48b Emission monitoring for particulate matter and nitrogen oxides.

* * * * *

(b) Except as provided under paragraphs (g), (h), and (i) of this section, the owner or operator of an affected facility subject to the nitrogen oxides standards under § 60.44b shall install, calibrate, maintain, and operate a continuous monitoring system for measuring nitrogen oxides emissions discharged to the atmosphere and record the output of the system.

* * * * *

(i) The owner or operator of an affected facility described in § 60.44b(j) or § 60.44b(k) is not required to install or operate a continuous monitoring system for measuring nitrogen oxides emissions.

7. Section 60.49b is amended by revising paragraphs (a)(2), (b), (e), (g) introductory text, and adding paragraphs (p) and (q) to read as follows:

§ 60.49b Reporting and recordkeeping requirements.

(a) * * *

(2) If applicable, a copy of any Federally enforceable requirement that limits the annual capacity factor for any fuel or mixture of fuels under § 60.42b(d)(1), § 60.43b(a)(2), § 60.43b(a)(3)(iii), § 60.43b(c)(2)(ii), § 60.43b(d)(2)(iii), § 60.44b(c), § 60.44b(d), § 60.44b(e), § 60.44b(i), § 60.44b(j), § 60.44b(k), § 60.45b(d), § 60.46b(g), § 60.46b(h), or § 60.48b(i),

* * * * *

(b) The owner or operator of each affected facility subject to the sulfur dioxide, particulate matter, and/or nitrogen oxides emission limits under § 60.42b, § 60.43b, and § 60.44b shall submit to the Administrator the performance test data from the initial performance test and the performance evaluation of the CEMS using the applicable performance specifications in appendix B. The owner or operator of each affected facility described in § 60.44b(j) or § 60.44b(k) shall submit to the Administrator the maximum heat input capacity data from the demonstration of the maximum heat input capacity of the affected facility.

* * * * *

(e) For an affected facility that combusts residual oil and meets the criteria under § 60.46b(e)(4), § 60.44b(j), or § 60.44b(k), the owner or operator shall maintain records of the nitrogen content of the residual oil combusted in the affected facility and calculate the average fuel nitrogen content on a per calendar quarter basis. The nitrogen content shall be determined using ASTM Method D3431–80, Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons (IBR-see § 60.17), or fuel suppliers. If residual oil blends are being combusted, fuel nitrogen specifications may be prorated based on the ratio of residual oils of different nitrogen content in the fuel blend.

* * * * *

(g) Except as provided under paragraph (p) of this section, the owner or operator of an affected facility subject to the nitrogen oxides standards under § 60.44b shall maintain records of the following information for each steam generating unit operating day:

* * * * *

(p) The owner or operator of an affected facility described in § 60.44b(j) or § 60.44b(k) shall maintain records of the following information for each steam generating unit operating day:

(1) Calendar date,

(2) The number of hours of operation, and

(3) A record of the hourly steam load.

(q) The owner or operator of an affected facility described in § 60.44b(j) or § 60.44b(k) shall submit to the Administrator on a quarterly basis:

(1) The annual capacity factor over the previous 12 months,

(2) The average fuel nitrogen content during the quarter, if residual oil was fired; and

(3) If the affected facility meets the criteria described in § 60.44b(j), the results of any nitrogen oxides emission tests required during the quarter, the hours of operation during the quarter, and the hours of operation since the last nitrogen oxides emission test.

[FR Doc. 89–28693 Filed 12–15–89; 8:45 am]
BILLING CODE 6560–50–M

federal register

Monday
December 18, 1989

Part III

Department of Labor

Employment and Training Administration

Job Training Partnership Act Title: III National Reserve Grants; Notice of Availability of Funds and Application Procedures for Program Year 1988

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act Title: III National Reserve Grants; Availability of Funds and Application Procedures for Program Year 1989

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and of solicitation for grant applications.

SUMMARY: The Employment and Training Administration announces the availability of JPTA title III discretionary national reserve funds for the remainder of Program Year (PY) 1989 (July 1, 1989–June 30, 1990) for the Federal delivery of dislocated worker services, and the procedures for making application in PY 1989. Applications will be accepted for four funding categories: Within State dislocated worker projects (including emergency circumstances), multistate dislocated worker projects, dislocated worker projects on Indian reservations and additional financial assistance to programs and activities provided by State and substate grantees. Information is also provided regarding application procedures to be used for technical assistance and training grants, contracts and agreements.

DATES: Applications will be accepted on an ongoing basis throughout the Program Year as the need for funds arises. Grant awards will be made during the Program Year in response to the applications received. The closing date for receipt of applications under this announcement is June 10, 1990. All applications must be received by 4:45 p.m. (Eastern Time) at the address below. Any application not reaching the designated place and date of delivery will not be considered, unless mailed not later than five (5) days prior to the closing date.

Applications submitted by mail must be postmarked no later than June 5, 1990. The term "postmark" means a printed, stamped, or otherwise placed impression (exclusive of postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

Hand-delivered applications must be received by 4:45 p.m. (Eastern Time) on June 5, 1990. It is preferred that applications be mailed. Telephone requests will not be honored.

ADDRESS: Mail or hand-deliver applications to: Office of Financial and Administrative Management, Division of Acquisition and Assistance, Employment and Training Administration, Department of Labor, room C–4305, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Barbara J. Carroll, Reference: Dislocated Worker Program.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Telephone: (202) 535–0577.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces the availability of funds reserved by the Secretary of Labor for the delivery of dislocated worker services, and the procedures to make application for these funds. Funding is authorized by section 302(a)(2) of the Job Training Partnership Act (JPTA or the Act) (29 U.S.C. 1652(a)(2)), as added by section 6302(a) of the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), Pub. L. 100–418, 102 Stat. 1107, 1525. The application procedures, selection criteria, and approval process contained in this notice are issued in accordance with JTPA and 20 CFR 631.61 (54 FR 39118, 39147, September 22, 1989).

This program announcement consists of five parts. Part I provides the background and purpose of the discretionary funds reserved to the Secretary of Labor (Secretary) for activities under section 323 of the Act. 29 U.S.C. 1662b. Part II describes the grant application process. Part III provides detailed guidelines for the preparation of an application and part IV enumerates the primary selection criteria used in reviewing an application for funding. Part V provides information regarding application for funding of technical assistance and training grants, contracts and agreements.

This program is listed in the *Catalog of Federal Domestic Assistance* at No. 17–246 "Employment and Training Assistance—Dislocated Workers" (JTPA title III programs).

Table of Contents

Table of Contents for Program Year 1989 Application Procedures for National Reserve Grants under title III of the Job Training Partnership Act.

The Table of Contents is as follows:

Part I. Background

Funds available for title III of JTPA for Program Year (PY) 1989 (July 1, 1989–June 30, 1990) total $283,773,000. Of this amount, $227,018,400 has been allotted by formula as prescribed in Section 302(a)(1) of the JTPA [Job Training Partnership Act as amended by EDWAA] and, of the remainder, $47,638,007 is available to be used by the Secretary pursuant to JTPA section 323(a) for discretionary purposes to provide services as described in JTPA section 314 in the following circumstances:

(1) Mass layoffs, including mass layoffs caused by natural disasters or Federal Government actions (such as relocations of Federal facilities) when the workers are not expected to return to their previous occupations;

(2) Industrywide projects;

(3) Multistate projects;

(4) Special projects carried out through agreements with Indian tribal entities;

(5) Special projects to address national and regional concerns;

(6) Demonstration projects;

(7) To provide additional financial assistance to programs and activities provided by States and substate grantees under part A of title III; and

(8) To provide additional assistance under proposals for financial assistance that are submitted to the Secretary and approved by the Secretary after consultation with the Governor of the State in which the project is to operate. 29 U.S.C. 1652(a)(1), 1661c, and 1662b.

In addition, these funds may be used for emergency assistance to a distressed industry or area as determined by the Secretary with the agreement of the Governor.

Pursuant to JTPA section 322(a)(3), the discretionary funds reserved by the Secretary shall be allocated in a manner that efficiently targets resources to areas of most need, encourages a rapid response to economic dislocations, and promotes effective use of funds. 29 U.S.C. 1662a(a)(3).

Projects and activities funded pursuant to section 323 (29 U.S.C. 1662b) shall be subject to the Act and regulations with the exception of the cost limitations which may, in the Secretary's discretion, be varied for a particular grant or project. In addition, attention is called to:

- Section 141(c) (29 U.S.C. 1551(c)) regarding restrictions on services to assist in the relocation of an establishment, and
- The Department of Labor policy regarding requirements for acceptable fixed-unit-price, performance-based contracts as published in the **Federal Register** at 54 FR 10459 (March 13, 1989).

Title III national reserve funds shall not be considered as an ongoing source of funds for existing centers or other permanent arrangements. For this reason, it is a general policy that the Department will not refund previously funded (by State or national reserve title III) projects, except under extraordinary circumstances.

The need for national reserve funds must be sufficiently severe that

(1) These needs cannot be met by JTPA programs and funds currently within the State, or other State and local resources, and

(2) Substantial numbers of individuals concentrated in a substate area, labor market area, region or industry are affected. In the case of multistate, regional and industrywide project applications, the threshold for determining that a "substantial" number of workers have been affected is the same as that used to define a "substantial layoff" at 20 CFR 631.1 of the JTPA regulations. 54 FR at 39139. The State may also apply for assistance for workers dislocated from small and medium-sized companies within a single State where the Governor has determined they constitute a substantial proportion of the State's econmic base as described at 20 CFR 631.30(b) of the JTPA regulations. 54 FR at 39143.

Eligible dislocated workers shall be those described in section 301(a) of the Act. 29 U.S.C. 1651(a). Special emphasis will be placed on those workers who "are unlikely to return to their previous industry or occupation." Since these funds are appropriated for title III of the JTPA, the projects operated by these funds are subject to the provisions of that Act and Federal regulations promulgated under the Act with the exception, in some cases, of those related to cost limitations and performance standards.

The Secretary may consider applications for title III discretionary funds to be used for on-going title III formula-funded activities. Such applications should be submitted only under unusual circumstances. The Department expects States and substate grantees to plan and operate their programs within the constraints of their formula allotments. Operations should not be conducted in a manner that anticipates discretionary funds in order to sustain formula operations. The Department will evaluate the use of both the formula allotments and the reallocated funds in its funding decision process. These funds are to be treated as all other formula funds. They are subject to the "forty percent/sixty percent" State and substate grantee distribution requirement (section 302(c)(1); 29 U.S.C. 1652(c)(1)) and the cost limitations. However, these funds are not subject to recapture and reallotment. For purposes of tracking national reserve funds, expenditures will be reported separately. In determining a State or substate grantee's performance, expenditures and additional participants resulting from such funding will be included in performance standard computations.

Because the Department recognizes the need for early intervention, proposals will be considered on a timely basis and every effort will be made to respond within 45 days of the Department's receipt of a proposal.

Generally, funds will be distributed as discussed in this notice. However, the Secretary reserves the right to distribute some of these funds taking into consideration special circumstances and unique needs that may arise throughout the course of the program year. If insufficient applications are received by the Department that are of acceptable quality and meet the guidelines and selection criteria to exhaust the title III national reserve account authorized funding level, the Department will return the remaining national reserve funds to the United States Treasury.

Part II. The Application Process

A. *Funding considerations.*

1. Identification of dislocated workers.

a. Dislocated workers eligible to be provided services with national reserve funds are defined as individuals who meet the definition set forth in section 301(a) of the Act. 29 U.S.C. 1651(a). The dislocated workers to be served must be identified in the application.

Eligible individuals may be served without regard to the State of residence of the individual (section 311(b)(1)(B); 29 U.S.C. 1661(b)(1)(B)).

b. Applications should indicate that the provision of services to eligible participants will take into account those "most in need", *i.e.*, those least likely to be recalled, those with the least transferable skills, those with the most barriers to other employment opportunities such as poor reading or math skills. They should also indicate that those participants requiring labor exchange services and other minimal employment services are directed to other appropriate resources including the State Employment Service.

c. In addition, when the proposed target group(s) has been laid off or terminated more than 4 months prior to submission of an application for funds, information should be provided to show the number of workers who remain unemployed and in need of services. In the case of layoffs, the likelihood of recall, retirement and transfer as well as the proportion of workers requiring little or no assistance in finding alternative employment should be assessed in determining the number of individuals likely to need services.

2. Disclocated Worker Project applications selected for funding will generally be those which define the need precisely, *i.e.*,

(a) Specify groups of dislocated workers, industries or plants, occupations and geographic areas;

(b) Link training and placement services with specific local demand occupations;

(c) Demonstrate a timely response to the target group's employment and training needs for such services; and

(d) Are cost-effective in terms of services to be provided and results to be achieved.

3. Priority consideration will be given to applications focusing on services to workers who "are unlikely to return to their previous occupation or industry" with particular emphasis on those requiring and wanting retraining for occupations determined to be in demand in the local economy.

B. *Screening and review of applications.*

1. Screening requirements.

All applications will be screened to determine completeness and conformity to the application guidelines and any other requirements contained in this announcement.

In order for an application to be in conformance, it must include the following:

a. A transmittal letter from the authorized signatory or Governor containing the required assurances.

b. SF 424, Application for Federal Domestic Assistance (Catalogue No. 17.246).

c. A detailed line item budget according to the cost categories found at 20 CFR 631.13 of the JTPA title III regulations. 54 FR 39118, 39140 (September 22, 1989).

d. Project narrative. The narrative portion of the application shall not exceed twenty-five (25) double-spaced pages, typewritten on one side of the paper only. The narrative must address all of the elements specified in the application guidelines.

e. A certification regarding a drug-free workplace shall be submitted with the application except in the case where the grantee is the State and has already submitted its annual certification to DOL. These requirements apply to direct recipients of grant funds from the Department of Labor. The certification for a drug-free workplace is found in appendix A.

f. A certification regarding Debarment, Suspension and Other Responsibility Matters, Primary Covered Transactions shall be submitted with all national reserve applications except those related to natural disasters, as required by the DOL regulations implementing Executive Order 12549, "Debarment and Suspension," 29 CFR 98.510, "Participants' responsibilities." This certification form is found in appendix B. If the applicant has already submitted such a form to the Department, it may include a copy of such form.

2. Complete, conforming applications will then be reviewed and evaluated based on the selection criteria in part IV and the availability of funds.

C. *Information and reporting requirements.*

1. By accepting a grant, the grantee agrees that it shall maintain and make available to the Department of Labor upon request, information on the operation of the project and on project expenditures. Such information may include the implementation status of the project such as completion of subagreements, hiring of staff, date enrollments began, current and cumulative number of participants and cumulative expenditures.

2. Reports.

The grantee shall submit to the Employment and Training Administration, an original and two copies of

a. The Worker Adjustment Program Quarterly Report. ETA Form No. 9020 (OMB No. 1205–0274)

b. The Worker Adjustment Program Annual Program Report. ETA Form No. 9019 (OMB No. 1205–0274)

D. *Funding mechanisms.*

1. (a) In the case of an Intrastate Dislocated Project such as a "within a single State" worker dislocation project, emergency funding of a dislocated worker project, or additional financial assistance to programs and activities provided by State or substate area grantees, the Department will issue a Notice of Obligation (NOO) of title III national reserve funds to the State, pursuant to the JTPA Governor/Secretary Agreement.

(b) A grant award letter containing the general specifications expected as a condition of the grant will accompany the NOO.

(c) The grant award letter, the grant application and the assurances and any amendments approved will govern the operation of the project.

2. (a) In the case of a grantee of a multistate, regionwide, industrywide project or of a project operated on an Indian reservation, a grant document will be signed by the grant applicant and the Grant Officer.

(b) The Grant Officer will provide specific information and instructions as to the method to be used to provide funds to the project at the time the grant document is signed.

(c) The grant document and any amendment will govern the operation of the project

3. The effective date for the use of the funds will be the date of the grant award letter or grant document and no costs may be incurred prior to this date. The authority to expend funds immediately is given in most cases to permit the most timely response to the needs of the newly dislocated worker.

4. Instructions regarding Grant Amendments required due to changes in circumstances after the grant award will be transmitted with the grant award letter or grant document.

E. *Application requirements.*

1. *An application for an Intrastate Dislocated Worker Project, i.e.,* within a single State, must comply with the following requirements:

a. The eligible grant applicant for such a project is the State agency (currently identified as the "administrative entity" under the JTPA Governor/Secretary Agreement with the Department of Labor hereinafter referred to as the State JTPA Agency) responsible for the provision of employment and training services to dislocated workers pursuant to title III of JTPA.

b. Eligible subgrantees who may operate such a dislocated worker project include but are not limited to State agencies JTPA title III substate grantees, units of local government, local public agencies, such as community colleges or area vocational schools; private non-profit organizations, including community-based organizations, labor organizations, regional development councils, and industry-sponsored associations; private-for-profit organizations and Indian tribal entities.

c. Submission of applications. Eligible applicants must ensure that the proposed "program operator" submits national reserve grant applications through the appropriate substate area grantee who will then forward the application to the Governor or State JTPA agency. The grant application shall then be forwarded to the Department by the Governor or State JTPA agency accompanied by the assurances listed below from the authorized signatory.

d. Assurances.

(1) Applications submitted by, or through, the substate grantee and the State shall be transmitted with a letter from the Governor or authorized JTPA signatory containing the following paragraphs:

If the proposed project is funded, any title III funds awarded from funds reserved by the Secretary will be administered in accordance with the proposal and amendments approved by the Grant Officer, if any, and consistent with the letter signed by the Department of

Labor Grant Officer accompanying the grant award.

The State assures that the information provided in the proposal is correct and the activities proposed conform to State program standards.

Certification regarding debarment, suspension, ineligibility and voluntary exclusion, lower tier covered transactions as required by the regulations implementing Executive Order 12549, "Debarment and Suspension" as set forth in 29 CFR 98.510, "Participants' responsibilities," shall be maintained for all subgrantees receiving funds under this project. (The required form may be found in appendix C.)

The State agrees to accept any grant funds awarded under this application, and provide administration and oversight of the grant.

Following receipt of the grant approval, the State will advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the State will provide additional information explaining the projected implementation date.

The State agrees to compile and maintain information on project implementation on a monthly, and performance and expenditures data on a quarterly, basis. The information will, at a minimum, be consistent with the activities and cost categories contained in the project proposal and will be available to the Department as requested.

(2) Project proposals not accompanied by these required assurances will not be accepted for review.

e. Review and coordination requirements.

(1) The Governor and substate area grantee. The Governor and substate area grantee may include comments regarding the proposed project with respect to the availability of State and substate formula funds, experience of the applicant in operating programs for dislocated workers, and any other area of concern pertinent to the funding of the project. These comments shall be forwarded by the Governor or authorized signatory at the time of submission.

(2) Private Industry Council (PIC)/ local elected official (LEO). All grant applications to provide services to dislocated workers shall provide evidence that the appropriate PICs and LEOs have been given the opportunity for review and comment.

(3) Labor organizations. All applications for dislocated worker projects where a substantial number (at least 20 percent) of affected workers are represented by a labor organization(s) must provide documentation of full consultation with the appropriate local labor organization(s) in the development of the project design. Thus, documentation is required for *each* union representing at least 20 percent of the affected workers.

2. *An application for a Multistate Dislocated Worker Project* including regionwide or industrywide projects must comply with the following requirements:

a. Eligible grant applicants. Applications may be submitted by, but are not limited to, State agencies, local public agencies such as community colleges or area vocational schools, private non-profit organizations, including community-based organizations, labor organizations, regional development councils, and industry-sponsored associations; and private-for-profit organizations.

All entities may not be appropriate applicants for all types of multistate projects. Applicant entities must be an appropriate agency given the nature and extent of the proposed project.

b. Eligible subgrantees who may operate such a dislocated worker project include but are not limited to State agencies; units of local government; local public agencies, such as community colleges or area vocational schools; private non-profit organizations, including community-based organizations, labor organizations, regional development councils, and industry-sponsored associations; and private-for-profit organizations.

c. Additional requirements.

(1) Applications must certify that recall within the next 12 months is highly unlikely for the majority of affected workers.

(2) Applicants for industrywide projects must demonstrate that the subject industry's employment is declining and there are poor prospects for reemployment based on any combination of the following data: Labor turnover, Employment Service vacancy data, labor market conditions in the States with industry facilities, and production trends, or that the Secretary has determined the industry to be depressed based on data available to the Federal Government.

d. Submission of applications.

(1) In the case of regionwide, industrywide, and multi-state projects, applications shall be submitted directly to the Grant Officer accompanied by the assurances listed below from the authorized signatory for the applicant.

(2) The application will not be accepted for consideration unless the applicant can demonstrate that there has been a series of mass layoffs affecting a minimum of 100 workers per site in at least 3 States with a minimum of 3 distinct separate subsites planned for the project.

e. Assurances.

(1) Applications for multistate, regionwide, and industrywide projects for dislocated workers shall be transmitted with a letter from the proposed grantee containing the following assurances:

If the proposed project is funded, any Title III funds awarded from funds reserved by the Secretary will be administered in accordance with the Act and JTPA regulations, the proposal and amendments approved by the Grant Officer, if any, and shall be consistent with the grant document signed by the Department of Labor Grant Officer.

The Grantee agrees to compile and maintain information on project implementation, performance and expenditures. The information will, at a minimum, be consistent with the activities and cost categories contained in the project proposal and will be available to the Department as requested.

Certification regarding debarment, suspension, ineligibility and voluntary exclusion, lower tier covered transactions, as required by the regulations implementing Executive Order 12549, "Debarment and Suspension," as set forth in 29 CFR 98.510, "Participants' responsibilities" shall be maintained for all subgrantees receiving funds under this project. (The required form may be found in appendix C.)

The grantee assures that the information provided in the proposal is correct and the activities proposed conform to the Act and Federal regulations for Title III activities.

Following receipt of the grant approval, the Grantee will advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the Grantee will provide additional information explaining the projected implementation date.

(2) Project proposals not accompanied by these required assurances will not be accepted for review.

f. Review and coordination requirements.

(1) Governors and substate grantees. Applications must include evidence that the Governor of each State and appropriate grantee of a substate area in which a project site is proposed have been informed of such an application and given an opportunity to comment on the proposed project as it would affect workers in that State or substate area.

Letters from the appropriate Governors and substate grantees are to be included to document that the opportunity was provided for review and comment of the application. Each Governor's letter shall indicate why the State has not funded the proposed subproject for that State. The substate grantee letter shall indicate why the substate grantee is unable to provide sufficient services to the proposed subproject in the substate area, as well as a description of the funding and

assistance it will provide to the subproject.

(2) Private Industry Council (PIC)/ local elected official (LEO). All grant applications to provide services to dislocated workers shall provide evidence that the appropriate PICs and LEOs have been given the opportunity for review and comment.

(3) Labor organizations. All applications for dislocated worker projects where a substantial number (at least 20 percent) of affected workers are represented by a labor organization(s) must provide documentation of full consultation with the appropriate local labor organization in the development of the project design. Thus, documentation is required for *each* union representing at least 20 percent of the affected workers.

3. *An Application for a Disclosed Worker Project on an Indian Reservation* must comply with the following requirements:

a. Eligible grant applicants. In the case of dislocation events affecting Indians on an Indian reservation, tribal entities shall be eligible grant applicants.

b. Indian tribal entities may contract with appropriate entities to administer the delivery of employment and training services to project participants.

c. Applications for dislocated worker projects to operate on Indian reservations shall be submitted directly to the Grant Officer accompanied by the assurances as provided in paragraph E.2.e.

d. Labor organizations. All applications for dislocated worker projects where a substantial number (at least 20 percent) of affected workers are represented by a labor organization(s) must provide documentation of full consultation with the appropriate local labor organization in the development of the project design. Thus, documentation is required for each union representing at least 20 percent of the affected workers.

4. *An Application for Emergency Funds* must comply with the following requirements (section 323(b); 29 U.S.C. 1662b(b)):

a. The determination that a situation or set of circumstances has resulted in a distressed area or industry that is appropriate for application for emergency funding may be initiated by either the Governor of the State where the emergency exists or by the Secretary.

b. The eligible grant applicant for emergency funds will be the State agency designated by the Governor to administer such funds.

c. Eligible subgrantees include all entities described at Part II.E.1.b.

d. The Secretary of Labor may determine that the massive devastation and economic dislocation caused by a natural disaster constitutes an emergency requiring emergency assistance with funds under section 302(a)(2) to those areas that are distressed as a result of the natural disaster, 29 U.S.C. 1652(a)(2). Under such circumstances, the Secretary, with the Governor(s) of the principal State(s) affected, may determine to mount special programs to demonstrate that title III funds can be used to assist the affected communities in a response that will enable workers to return to employment as soon as possible.

(1) A principal strategy in this approach would be to develop special temporary jobs that would inure to the public benefit. Such jobs shall be in public or private non-profit agencies for up to six months duration to assist in community repairs and cleanup, to enable resumption of regular employment.

(2) It is in the interest of the public and affected individuals that these jobs be filled as rapidly as possible.

(3) These jobs are to be filled consistent with section 301(a) of the Act. 29 U.S.C. 1651(a). Therefore, for purposes of eligibility for emergency jobs under these special programs, individuals who have become unemployed because of the natural disaster, or who are long-term unemployed as determined by the Governor, shall meet the eligibility requirements.

e. An initial request for funds based on correspondence or telephone communication with the Secretary shall be submitted to the Grant Officer accompanied by the required assurances, as found at paragraph E.1.d.

f. Initial emergency funding, not to exceed 30 percent of the total amount approved for the grant award, may be made available based on the initial funding request and shall be used to provide funds for project planning (including surveys or other needs assessment activities), start-up costs (obtaining facilities, hiring costs) and early implementation costs (such as staff salaries until the grant application is approved), assessment, and training costs.

g. Documentation in support of the emergency request, accompanied by a complete application for the balance of the available national reserve grant funds, shall be submitted within 60 days of receipt of emergency funds, unless the Governor and the Secretary have agreed to a different time frame.

The fully documented application for other emergency circumstances shall be submitted using the same procedures as for intrastate dislocated worker project applications regarding the requirements for review and coordination and assurances. The application will be reviewed using the same selection criteria as those used for other title III national reserve applications. The Secretary may require specific information relating to the particular circumstances of the emergency or may use the guidelines for an application for a dislocated worker project as found at paragraph D of Part III.

5. *An Application for Additional Financial Assistance to programs and activities provided by State and substate grantees* (section 323(a)(7); 29 U.S.C. 1662b(a)(7)) other than to fund a dislocated worker project.

Such an application must comply with the following requirements:

a. The eligible grant applicant for such a project is the State agency responsible for the provision of employment and training services to dislocated workers pursuant to title III of JTPA.

b. Additional eligibility requirements:

(1) No State or substate grantee shall be eligible if funds from that State or substate area were reallocated the previous year.

(2) No State or substate grantee shall be eligible as long as there are unused funds that would not be expended by the end of the Program Year.

(3) No State or substate grantee may request funds just for a single activity such as administration or needs-related payments.

(4) The State must demonstrate that based on the statutory formula used to allot funds to the State (section 302(b); 20 U.S.C. 1652(b)), there has been an increase of at least 20 percent in at least one of the appropriate funding formula factors such as: The number of relative unemployed individuals who reside in the State or substate area as compared to the total number of unemployed individuals in all States or in all of that State's substate areas; in the relative excess number of unemployed individuals residing in the State; or in the number of individuals who have been unemployed in excess of 15 weeks.

(5) No State or substate grantee may receive grant funds to serve additional dislocated workers if the State or substate grantee is presently serving displaced homemakers with formula funds in the year in which the application is submitted (as a result of a determination that service to this additional dislocated worker group could be provided without adversely affecting the delivery of services to dislocated workers eligible for services

under section 301(a)(1) (A) and (B)). 29 U.S.C. 1651(a)(1) (A) and (B).

c. Submission of applications.

The Governor or authorized signatory for the State shall submit a national reserve application for additional financial assistance in support of title III formula-funded activities and programs provided by the State or substate grantees to the Grant Officer. The application shall be accompanied by the assurances listed below.

d. Assurances.

Applications submitted by, or through, the substate grantee and the State shall be transmitted with a letter from the Governor or authorized signatory containing the following paragraphs:

If the proposed request for financial assistance is funded, any Title III funds awarded from funds reserved by the Secretary will be administered in accordance with the grant application approved by the Grant Officer and consistent with the letter signed by the Department of Labor Grant Officer.

The State assures that the information provided in the proposal is correct and the activities proposed conform to State program standards.

Within 30 days of receipt of the grant approval, the State agrees to allocate the grant funds for additional financial assistance to the substate grantees in accordance with the proposal and grant award letter.

Part III. Application Content

A. *Content of an Application for an Intrastate, or Multistate Dislocated Worker Project or a Dislocated Worker Project on an Indian Reservation.*

Following are the areas to be addressed and information to be provided in each grant application submitted for JTPA title III national reserve funds. It is strongly recommended that grant applicants follow the format and sequence presented.

1. Period of Performance: Application should cover a period of time generally not to exceed 18 months. Applications for periods in excess of 18 months may be submitted with information supporting the need for the additional period.

2. Period of Award: Generally, awards will be made for an 18-month period to allow for project start-up, operation, and phasedown.

3. Synopsis of the Project to serve dislocated workers. A short summary of the pertinent facts regarding the project that includes the following:

a. The name and address of the project operator along with the name and phone number of a contact person for the project operator;

b. The project location (city, county, Indian reservation);

c. The planned starting and ending dates of the project;

d. The total amount of Title III national reserve funds requested;

e. The name(s) of the company(ies) from which the affected workers have been dislocated, and the type of business or industry involved;

f. The date(s) of employment termination and the number of workers affected;

g. The names of the counties and cities or Indian reservation in which the affected workers reside;

h. The total number of participants planned;

i. The total number of placements planned;

j. The planned cost per participant;

k. The planned cost per entered employment; and

l. The name, address, and telephone number of the signatory official for the substate grantee(s) serving the area in which the project is to be operated.

4. The Project Narrative must address the following elements:

a. Target Group Identification. A description of the need for a project to serve the target group and an explanation of how this need was determined. (Note: An application by an Indian tribal entity for funds for a dislocated worker project must be based upon a specific plant closure or mass layoff that has occurred within the past year. The facility involved must be located on an Indian reservation.) The description should include:

(1) The industry(ies) affected;

(2) The schedule for layoff(s) and/or closing(s);

(3) The number of individuals likely to participate in the program, taking into consideration:

(a) The total number of individuals affected by specific occupations and the wage levels for each occupation;

(b) The number of individuals eligible to participate, with special attention given to those workers who will need more extensive services than available labor exchange services provided by the State Employment Service agency, based on their occupational skills;

(c) The number of individuals likely to retire;

(d) The number of individuals likely to transfer;

(e) The number of individuals likely to be recalled;

(f) The number of individuals who possess locally transferable skills and, therefore, will find other employment with minimal assistance; and

(g) When the layoff(s) or closure(s) has occurred more than 4 months prior to submittal of the application, information should be provided to show how the proposed operator determined the number of individuals who remain unemployed and in need of services.

Note: Provide the methodology that was used to determine these numbers.

(4) Evidence that the workers to be served are aware of and support the proposed program operator's application.

(5) The economic conditions for the State and the geographic area to be served as documented by the most recent unemployment rate for the area, or the economic and unemployment trends in the specific industry affected, to illustrate the severity of the need for such a project.

(6) In the case of an application to address workers dislocated due to a natural disaster, it is important to identify the companies whose workers are permanently displaced and will not resume operations after a clean-up or short recovery period. Workers affected by a natural disaster may also be eligible to receive Disaster Unemployment Assistance through the local UI offices.

(7) If the proposed target group includes workers dislocated as a result of the relocation of a company plant, the City and State to which the plant will be relocated should be provided.

b. Why the need cannot be met by existing resources. A statement of why the need cannot be met by existing Federal, State and local resources. The statement should indicate why the proposed project was not funded with State or substate grantee title III funds.

(1) In the case of an application submitted through the State, the status of fund availability for both the State's title III formula program and discretionary awards, including total obligations and expenditures from available title III funds against total availability shall be provided. This information should be through the end of the quarter prior to the subject application. Where a substate grantee will operate the proposed program, the same information regarding fund availability, obligation and expenditure of substate formula funds, as well as any discretionary national reserve funds, should be provided.

(2) The application must indicate whether an application has been made (provide petition number, if available), or a certification given, for Trade Adjustment Assistance (TAA) for the affected workers. When the proposed target group has applied for TAA certification or has been certified, a

description of how TAA resources and national reserve grant funds will be coordinated should be provided. A statement shall be provided, pursuant to section 141(h) of JTPA, that the project operator will ensure that duplication of services does not occur. 29 U.S.C. 1551(h).

The current TAA funding availability and obligations shall be provided as well as information on any current request to the Department for TAA funds to serve these workers.

(3) The nature and duration of any contractual obligation of, or voluntary arrangements by, the employer(s) or union(s) to provide employment-related services to terminated employees shall be included.

c. Labor market employment opportunities.

All applications must contain a discussion demonstrating familiarity with the local labor markets including occupations in which participants will be trained, retrained or placed. The discussion shall include the following:

(1) An explanation of how the potential for placement in occupational areas was determined, including information on specific employers or industries that have demands for workers in those occupational areas and whether retraining will be required prior to placement. The source of such information should be provided.

Note: A list of demand occupations within the State is the least acceptable approach to providing this information. Local information, including special employer surveys, is preferable.

(2) Information that shows how the characteristics and skills of the target group population are related to the demand occupations identified in the labor market for placement.

(3) Certification that the number of currently unemployed workers available for employment in the demand occupations for which retraining is planned is insufficient to meet the need.

d. Coordination and linkage.

In addition to the applicable review and coordination requirements described in Part II paragraph E.1.e; E.2.f; or E.3.d. of this announcement, all applications for funds will be required to:

(1) Describe the involvement (if any) of organized labor in the development and operation of the proposed project activities.

(2) Show how the proposed project for dislocated workers will coordinate with other State and local agencies and related programs including but not limited to:

(a) The local substate grantee(s),

(b) Veterans' programs (including JTPA) available in the area.

(c) The State Employment Service, including the Trade Adjustment Assistance (TAA) program if appropriate,

(d) The Unemployment Compensation System to ensure that workers understand the requirement for enrollment in training in order to be eligible for needs-related payments, as outlined in 20 CFR 631.20 of the JTPA regulations 54 FR 39118, 39142 (September 22, 1989),

(e) The Pell Grant program, and

(f) Other appropriate State and local program resources.

In those instances where other State funds, such as vocational education, economic development, TAA, or special appropriations are available to the project, it is necessary to include a brief discussion of the activities for which these funds will be used and their relationship to the national reserve funds requested, taking into consideration section 141(b) of the Act.

e. A description of services.

(1) Basic Readjustment Services (JTPA section 314(c); 29 U.S.C. 1661c(c)). Describe how assessment, job search assistance, counseling, job development and placement services and any other activities will be coordinated with training activities (assessment procedures must include the capability to determine if a participant's reading skills are below the 7th grade level);

(2) Retraining services (JTPA section 314(d); 29 U.S.C. 1661c(d)). Describe the training to be provided, including the types and lengths of training for various occupations or occupational areas, and the likely providers of both on-the-job and classroom skill training (Note: National reserve funds will not be provided to substitute for such activities as the employer's traditional training responsibility associated with model changes, the introduction of new products or general employee upgrading.);

(3) Participant supportive services. Discuss which services will be provided and how they will be coordinated with training activities, including needs-related payments; (JTPA section 314(e); 29 U.S.C. 1661c(e)); and

(4) Intake and eligibility determination. Describe the procedures to recruit and ensure the eligibility of each participant.

f. Implementation Plan.

(1) A schedule for the implementation of program activities upon receipt of funds and discussion of initial actions taken to support implementation. Enrollment of participants should normally occur within 90 days of the grant award. If such a time schedule cannot be met or is inappropriate, an explanation of the implementation schedule provided should be included.

(2) Quarterly implementation data showing the following projected cumulative data:

(a) Enrollments for each major activity—assessment, job search assistance, classroom skills training, on-the-job training and other training;

(b) Total terminations;

(c) Number of participants entering employment from each activity; and

(d) Expenditures.

g. Planned Outcomes. Project data showing the projected overall:

(1) Cost per Participant;

(2) Cost per Entered Employment;

(3) Entered Employment Rate; and

(4) Average Wage Rate at Entered Employment.

In multistate projects, this data shall also be provided for each subproject site.

h. Financial and Management Capability. Except where the actual project operator will be the State or the substate grantee, a description of the fiscal and management capabilities of the prospective project operator should include: (Limit to no more than three pages.)

(1) Background description of how the prospective project operator (or the division which will have responsibility for this project) is or will be organized.

(2) Current or previous relevant experience in providing services to dislocated workers or in administering such programs.

(3) The capability to maintain and report as necessary required fiscal and management information.

i. A Detailed Line Item Budget.

(1) Costs for each item shall be apportioned under administration, rapid response, basic readjustment, services, retraining, needs-related payments and supportive services cost categories as classified in 20 CFR 631.13. 54 FR 39118, 39140 (September 22, 1989).

(a) Line items include but are not limited to: facilities, equipment, supplies, staffing and fringe benefits, job search assistance, classroom vocational skill training, on-the-job training, remedial education, counseling, transportation assistance, child care, relocation assistance, and needs-related payments.

(b) In the case of an intrastate project, the State may reserve .015 percent of the total grant award or $15,000, whichever is less, for costs associated with the administration of the grant such as contract negotiation, reporting activities and project oversight. State

administrative costs requested that are above this established setaside must be accompanied by a justification showing the projected person-hours and functions to be performed.

(2) Depending on the nature of the project and the identity of the grantee, an applicant may submit a budget that requests a deviation from the cost limitations in 20 CFR 631.14. The general intent of the limitations should be reflected in the allocation of the budget. 54 FR at 39141. The Secretary will decide, in the grant award, whether and to what extent the cost limitations apply.

(3) Where national reserve funds will be combined with funds from other sources—the employer, union training funds, State formula-allotted funds, State vocational education, or economic development funds, *etc.*—the budget should indicate for each line item the total cost and the amount to be funded from the national reserve account and the other funding source(s).

B. *Content of an application for emergency funds.*

1. *The State's initial request for funding* should be brief and provide the following information:

a. An explanation of the circumstances requiring the emergency funds;

b. The areas to be served by the grant;

c. A brief assessment of the need;

d. An estimate of the number of individuals impacted by the emergency;

e. A brief summary of the activities to be conducted;

(1) These activities must be allowable under section 314 of the Act. 29 U.S.C. 1661c. In the case of a natural disaster, temporary job creation may be permitted as a demonstration program under Section 324 of the Act. 29 U.S.C. 1662(c).

(2) Wages paid for any temporary jobs created must meet the requirements set forth in section 142(a)(3) of the Act. 29 U.S.C. 1552(a)(3).

f. An estimate of the number of participants to be served by the emergency grant request. Participants shall be eligible pursuant to the definitions set forth at section 301(a). 29 U.S.C. 1661(a); and

g. The total amount of funds requested.

2. *A fully documented proposal* submitted by the State must be approved before the remaining balance of the approved grant amount will be allocated to the State.

a. A fully documented proposal shall include the same items required for a dislocated worker project application as found in Part III, paragraph A, except when the emergency funds are to be used only for temporary job creation in the case of a natural disaster.

b. The fully documented proposal to conduct only short-term emergency activities in the instance of a natural disaster must include:

(1) A period of performance of 6 months.

(2) A substantive description of the nature and extent of the problem in the State with an estimate of the number of individuals affected, including the geographic location of the emergency circumstances, the area where services and activities will be conducted if different from the location of the emergency circumstances, and the projected immediate recovery period.

(3) A description of how the State will identify and recruit individuals to be served under the project, and the total number of individuals to be served.

(4)(a) A description of the types of services to be provided and the numbers of individuals to receive various services under the short-term emergency response. This includes the number of individuals to be provided temporary jobs, the types and location of temporary jobs, a statement that the workers are authorized to perform the temporary jobs, the wages (or wage range) to be paid in major job categories, and a description of the employers for such jobs with any criteria the State uses in selecting such employers. To the extent that regular employees of the employing unit (*e.g.*, unit of government utilizing the emergency JTPA funds) have the authority to do this work, then so do the employees hired with the emergency funds.

(b) A description of how the State will determine individuals to fill any temporary jobs.

(c) A monthly implementation schedule for each of the activities to be conducted.

(5)(a) Identification of the entity in the State that will be responsibile for the overall administration of the emergency project.

(b) A description of the monitoring plan of the project and the steps that will be taken to ensure the integrity of project activities.

(6)(a) A line-item budget for JTPA national reserve funds by major activities that specifically reflects staff and other costs to be supported by the award in each of the cost categories. The title III cost categories shall be used in the proposal. Expenditures on temporary jobs for participants are to be included under the cost category of retraining-natural disaster. The title III cost limitations on administration and needs-related payments/supportive services shall apply.

(b) A description of the relationship between JTPA funds and any other funds which may be available.

(7)(a) The reporting of JTPA funds and activities shall reflect the budget categories and activities contained in the approved project proposal.

(b) The State will submit a detailed report of the project within 45 days of the end of the project.

(c) The State will also provide brief monthly cumulative reports on the number served, total expenditures and the number of monitoring visits conducted. These reports will be submitted on the 10th of the month for the previous month.

(8) The State will assure that it will monitor on a regular basis and provide technical assistance to each subgrantee to ensure that—

(a) The objectives of the program will be met;

(b) The jobs created will be consistent with jobs specified by subgrantees;

(c) Time and attendance records will be accurate; and

(d) The subgrantee is managing and operating its programs in accordance with the Act, the regulations, and the provisions, terms, and conditions of the emergency grant.

C. *Content of an application for additional financial assistance to formula-funded Title III programs and activities provided by State and substate grantees (section 323(a)(7); 29 U.S.C. 1662b(a)(7)).*

1. Period of Award. Applications should cover a period of time not to exceed 12 months. Applications for periods in excess of 12 months may be submitted with information supporting the need for the additional period.

2. Synopsis of the proposal:

a. The total amount of title III national reserve funds requested;

b. Total number of participants to be served with the requested funds;

c. The total number of placements planned;

d. Planned cost per participant based on additional funds to be used by substate grantees; and

e. Planned cost per entered employment based on additional funds to be used by substate grantees.

3. Application narrative:

a. Describe the substate area or areas for which the additional financial assistance is required including the projected number of participants served under the substate plan and the substate grantee's performance to date based on the services provided.

b. Address why the need cannot be met by existing resources.

(1) Provide the status of fund availability (obligations and expenditures) for the State and substate grantees, where appropriate, for the most recent quarter.

(2) Where appropriate, a statement from the State should be included certifying that the substate grantee's funds have not been subject to reallocation.

(3) The State must indicate that it has exercised State reallocation procedures and that no funds are available from either the 60 percent or 40 percent funds within the State.

c. An explanation must be submitted, stating how the circumstances under which State formula funds were provided, or under which the State allocated funds to the substate area(s) have substantially and significantly changed so as to justify the need for additional funds. Such circumstances would include an increase in mass layoffs or plant closings with accompanying numbers of dislocated workers which are at least 10 percent of the State or local labor force, a 20 percent increase in the State or local unemployment rate or rate of long-term unemployment, or similar increases such as farm or ranch failures or closures.

d. A statement must be included providing information to indicate the severity of need for additional funds, such as the area unemployment rate, an analysis of unemployment insurance (UI) exhaustees, the proportion of unemployed workers who lack sufficient skills to remain in the labor force without assistance, *etc.*

e. Include a brief descripton of the activity(ies) to be funded.

f. Include an implementation plan which provides:

(1) A schedule for the implementation of proposed activities upon receipt of funds, and

(2) Quarterly implementation data showing the following cumulative projected data as appropriate: enrollments by activity, total terminations, number of participants who entered employment and expenditures.

g. Set forth planned outcomes, if appropriate, including: cost per participant, cost per entered employment, and entered employment rate.

h. A detailed line-item budget must be submitted. These funds are subject to the cost limitations found in section 315 of the Act (29 U.S.C. 1661d) and are subject to the regulations found at 20 CFR 631.14. 54 FR 39118, 39141 (September 22, 1989). Line-item costs shall be apportioned by the cost categories required for Department of Labor Report ETA 9020, "Worker Adjustment Program Quarterly Financial Report" (WQFR). (OMB Control No. 1205-0274)

IV. Application Selection Criteria

Grant applications for JTPA Title III national reserve funds will be evaluated and selected for funding based on the following:

A. *Overall criteria* (JTPA section 322(a)(3); 29 U.S.C. 1662b(a)(3)) against which all applications for national reserve funds, regardless of the proposed use, will be considered. The application—

1. Efficiently targets resources to areas of most need,

2. Encourages a rapid response to economic dislocations, and

3. Promotes the effective use of funds.

B. *Application Review.*

1. Applications will be reviewed and approved or rejected based upon overall responsiveness of the application's content and the application of the selection criteria, taking into consideration the extent to which funds are available.

2. Applications may be rejected where—

a. Other available applications appear to be more effective in achieving the goals of title III, or

b. The information required is not provided in sufficient detail to permit adequate assessment of the proposal, or

c. The information regarding why the State and substate grantee were unable to fund the proposed project is not provided.

C. *Additional specific criteria for evaluation and selection of applications for Intrastate, Multistate, Indian Reservation and Emergency Dislocated Worker Projects.*

1. Demonstrated need. The severity of the circumstances and need as described in the grant application *e.g.*, the immediacy of the schedule for layoff(s) and plant closing(s), the number of individuals affected, the local and State unemployment rates compared to the national rate, the scope of a natural disaster, the projected short- and long-term effect of events on unemployment).

2. The identification of a specific target group(s). The concentration of the eligible individuals in a specific occupation(s), plant(s), industry(ies) or geographic area(s). The extent to which the project is focused on the affected subpopulation actually requiring retraining services in order to remain in the labor force as shown by an analysis of the characteristics of the affected workers. This shall be a major factor in determining the responsiveness of a proposal.

3. Coordination and utilization of resources. The extent to which it is demonstrated that the project will be integrated with other existing program and community resources, including the State/substate Title III formula-funded activities and other JTPA programs, as well as the Trade Adjustment Assistance program, where appropriate.

4. Service delivery strategy. The services to be provided and the service mix, including the degree to which the services appear to meet the needs of the target population. The extent to which *specific occupations* identified for retraining and placement, with evidence presented that demand exists for workers to be served by the project, as well as the degree to which a proposal provides for retraining in specific occupations, either in an on-the-job or in a classroom setting shall be major factors in determining fundability.

5. Management capability. Assurance of project operator's fiscal and program management capabilities to administer the proposed project. The demonstrated ability to begin program operations expeditiously.

6. Cost effectiveness. The cost effectiveness of the project; *e.g.*, cost per participant, cost per placement, and cost per activity in relation to services provided and the outcomes projected including expected wage levels. The level of funding designated for client services as opposed to staff support and administration. The proportion of staff costs to those costs directly attributable to client services such as tutition, tools *etc.* The cost effectiveness of the project shall be a major factor in determining fundability.

7. Comments regarding the application received by the Grant Officer.

8. The overall effectiveness and efficiency of the proposal itself as compared to other proposals received.

D. *Additional specific criteria for evaluation and selection of Applications for Title III discretionary funds to be used by States and substate grantees for formula activities:*

1. A demonstration that State and substate grantee formula funds will not remain unused and that formula funds are not available to meet the need. The burden of proof regarding the unavailability of funds lies with the applicant.

2. A demonstration that the circumstances under which State formula funds were provided or under which the State allocated funds to the substate grantee have substantially and

significantly changed so as to justify the need for additional funds.

3. The severity of circumstances and need in the State or substate area as described in the grant application.

4. The ability of the State or substate grantee(s) to utilize the funds provided immediately.

5. The cost effectiveness of the project or activity, including the extent to which other State and substate public and private resources, have been integrated into the proposed project or activity.

6. The extent to which the expenditure of funds will be directly for, or related to, the provision of services to participants.

7. The overall effectiveness and efficiency of the proposal itself.

PART V. Technical Assistance and Training (TAT)

Section 323(c)(1) and (2) of the JTPA allows for amounts, not to exceed 5 percent of the funds reserved under section 302(a)(2), for Staff Training and Technical Assistance. 29 U.S.C. 1662b(c)(1) and (2); see 29 U.S.C. 1652(a)(2). Section 323(d) allows for those same amounts to be used for training of rapid response staffs. Such funds may be used under 20 CFR 631.61, 54 FR 39118, 39147 (September 22, 1989). Should the Department decide to procure such services, it will issue a separate solicitation. The selection of grantees and contractors shall be in compliance with Employment and Training Order 2–87, "Management of Procurements Administered by Employment and Training Administration National and Regional Offices," as it applies to Technical Assistance and Training Grants, Contracts and Agreements.

Signed at Washington, DC, this Seventh day of December, 1989.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

Appendix A

Certification for a Drug-Free Workplace

I. Definitions. As used in this provision,

A. "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11–1308.15.

B. "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

C. "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

D. "Drug-free workplace" means a site for the performance of work done in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

E. "Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract.

F. "Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

II. By submission of its offer, the offeror, if other than an individual, who is making an offer that equals or exceeds $25,000, certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, it will—

A. Publish a statement notifying such employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establish a drug-free awareness program to inform such employees about—

1. The dangers of drug abuse in the workplace;

2. The Contractor's policy of maintaining a drug-free workplace;

3. Any available drug counseling, rehabilitation, and employee assistance programs; and

4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

C. Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph II.A.(a) of this provision;

D. Notify such employees in the statement required by subparagraph II.A.(a) of this provision, that as a condition of continued employment on the contract resulting from this solicitation, the employee will—

1. Abide by the terms of the statement; and

2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

E. Notify the contracting officer within ten (10) days after receiving notice under subdivision (b)(4)(ii) of this provision, from an employee or otherwise receiving actual notice of such conviction; and

F. Within 30 days after receiving notice under subparagraph II.D. of this provision of a conviction, impose the following sanctions or remedial measure on an employee who is convicted of drug abuse violations occurring in the workplace;

1. Take appropriate personnel action against such employee, up to and including termination; or

2. Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement, or other appropriate agency.

G. Make a good faith effort to maintain a drug-free workplace through implementation of subpragraphs (2)(a) through II.F of this provision.

3. By submission of its offer, the offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract resulting from this solicitation.

4. Failure of the offeror to provide the certification required by paragraphs 2 or 3 of this provision, renders the offeror unqualified and ineligible for award. (See 29 CFR part 98, 54 FR 4947 (Jan. 31,1989), corrected at 54 FR 6363 (Feb. 9, 1989)).

5. In addition to other remedies available to the Government, the certification in paragraphs 2 or 3 of this provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under title 18, United States Code, section 1001.

Appendix B

Certification Regarding Debarment, Suspension, and Other Responsibility Matters; Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160–19211).

(Before Signing Certification, Read Attached Instructions Which Are an Integral Part of the Certification)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such

prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature

Date

Instruction for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department of Labor's (DOL) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the DOL determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the DOL may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate action notice to the DOL if at any time the prospective primary participant learns its certification was erroneous when submitted or has become erroneous by reason of charged circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the DOL for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared, ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions," provided by the DOL, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the *List of Parties Excluded From Procurement or Nonprocurement Programs.*

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may terminate this transaction for cause or default.

Appendix C

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion; Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 **Federal Register** (pages 19160–19211).

(Before Completing Certification, Read Attached Instructions Which Are an Integral Part of the Certification)

(1) The prospective recipient of Federal assistance funds certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature

Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective recipient of Federal assistance funds is providing the certification as set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.

3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective recipient of Federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.

6. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the *List of Parties Excluded from Procurement or Nonprocurement Programs.*

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under

paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment.

[FR Doc. 89-29302 Filed 12-15-89; 8:45 am]
BILLING CODE 4510-30-M

federal register

Monday
December 18.1989

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Part 199

Control of Drug Use in Natural Gas, Liquefied Natural Gas and Hazardous Liquid Pipeline Operations; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS-102, Amdt. No. 199-2]

RIN 2137-AB54

Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; partial grant of petitions for reconsideration.

SUMMARY: This action responds to petitions for reconsideration, of the final rule, published in the **Federal Register** on November 21, 1988 (53 FR 47084), requiring operators of pipeline facilities for the transportation of natural gas or hazardous liquids and operators of liquefied natural gas facilities to have an anti-drug program for employees who perform certain sensitive safety-related functions covered by the pipeline safety regulations. On April 13, 1989, the implementation dates contained in the final rule were modified to permit reevaluation of the rule in light of recent decisional law and consideration of issues raised by the petitions for reconsideration. The petitions for reconsideration are granted in part and denied in part, for the reasons set forth below. This document amends the final rule to implement those portions of the petitions granted, and makes other clarifying changes and corrections.

EFFECTIVE DATE: The amendments in this document are effective January 17, 1990.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon, Assistant Director for Regulation, Office of Pipeline Safety, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-1640.

SUPPLEMENTARY INFORMATION: On November 21, 1988, RSPA published a final rule (53 FR 47084) entitled "Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations." The rule requires pipeline operators to have an anti-drug program which includes pre-employment, post-accident, random, and reasonable cause drug testing and an Employee Assistance Program (EAP) for education and training regarding the effects and consequences of drug use.

On April 13, 1989, RSPA published a notice of a delay in the implementation dates (54 FR 14922) to permit careful reevaluation of its rule in light of two recent Supreme Court decisions, as well as consideration of the issues raised by several petitions for reconsideration. Dates for commencement of drug testing were modified in the following manner: The date for commencement of drug testing for operators with more than 50 employees subject to testing was delayed to April 20, 1990, and the date for operators with 50 or fewer such employees was delayed to August 21, 1990. RSPA received timely petitions for reconsideration of the final rule from the American Gas Association, the Interstate Natural Gas Association of America, the MidCon Corporation, Tenneco Gas Pipeline Group, Pacific Gas and Electric Company, and El Paso Natural Gas Company, and a late-filed petition from the United Steelworkers of America, AFL-CIO. RSPA considered the issues raised in all seven petitions for reconsideration and also reviewed the rule in light of recent decisional law. Discussion of the issues and RSPA's response follows.

Request for Stay Pending Supreme Court Decisions. Pacific Gas and Electric Company (PG&E), the Interstate Natural Gas Association of America (INGAA), and the Tenneco Gas Pipeline Group (Tenneco) requested a delay in implementation of the final rule until the Supreme Court issued decisions in two cases that directly affect employee drug testing programs: *Skinner* v. *Railway Labor Executives' Association,* 109 S. Ct. 1402 (1989), and *National Treasury Employees Union* v. *Von Raab,* 109 S. Ct. 1384 (1989). INGAA requested a stay of one year after the constitutional issues are resolved.

RSPA Response. On March 21, 1989, the Supreme Court announced its decisions in both cases and upheld the constitutionality of certain types of federally-mandated employee drug testing. On April 13, 1989, RSPA published a notice delaying the implementation dates for the final rule to enable consideration of the Supreme Court decisions and of the pending petitions for reconsideration. RSPA thus effectively granted this portion of the petitioners' request. RSPA does not believe any additional delay in implementing the rule is needed.

Constitutional Issues. The American Gas Association (AGA) argued that mandatory random drug testing may violate the Fourth Amendment prohibition on unreasonable searches, and suggested that until the issue is resolved by the courts, operators should be given the option of instituting random testing, but should not be required to do so.

Specifically, the petitioners asserted that RSPA has not shown a compelling governmental safety interest sufficient to demonstrate the constitutionality of the final rule because DOT has acknowledged the excellent safety record of the pipeline industry and has been unable to provide any evidence of a drug problem in the pipeline industry. Two petitioners also noted that a U.S. District Court (Northern District of California) had issued a temporary restraining order against random and mandatory post-accident drug testing in the trucking industry, (which was subsequently expanded to a preliminary injunction) and suggested therefore that random testing was unlikely to withstand constitutional scrutiny.

INGAA asserted that a number of pipeline employees may have property interests in their jobs stemming from a collective bargaining agreement or other employment contract. INGAA contends that to the extent these employees have such a property interest, the drug testing regulations violate the due process clause of the Fifth Amendment because a positive urine test requires that the employee be removed immediately from his or her job duties without a hearing, and endangers his or her continued employment.

RSPA Response. The decisions the Supreme Court handed down in *Skinner* and *Von Raab* shed considerable light on the constitutional issues raised in the petitions. The Supreme Court agreed that the drug tests were "searches" and, therefore, implicated the Fourth Amendment's protection against "unreasonable searches and seizures"; however, the Court concluded that the tests were reasonable, under a "balancing test" that measured the privacy interests of the employees against the Government's public safety and law enforcement interests. The most important factors in this balancing were: The Government's compelling interest in detecting and deterring the use of drugs and alcohol by workers in safety or security-related jobs; the employees' diminished expectations of privacy resulting from either existing, pervasive governmental safety regulation, or the nature of the employees' duties; the search was not conducted pursuant to a criminal investigation; and the minimal intrusion on employee privacy from the tests, which were conducted in a medical-like environment and, generally, without direct observation.

The Court found the Government's interests in drug testing sufficiently compelling to make warrants, probable cause, or "individualized suspicion" unnecessary (reversing an earlier ruling by the U.S. Court of Appeals for the Ninth Circuit, *Railway Labor*

Executives' Association v. *Burnley*, 839 F.2d 575 (1988)). The Court noted that a substance-impaired employee performing a safety-sensitive job could cause tragic consequences long before any signs of impairment were noticeable. Significantly, the Court found that the Government's interest was served by the deterrent effect of the drug testing in both cases, notwithstanding that testing might reveal few drug users. In *Von Raab*, however, the Court held that the record evidence was insufficient to determine whether the drug testing was reasonable for employees subject to testing only because they had access to classified materials. The Court remanded this issue to the Fifth Circuit Court of Appeals.

Although *Skinner* and *Von Raab* did not consider random testing, recent decisions by the U.S. Court of Appeals for the District of Columbia Circuit make it clear that while the random nature of the testing is a consideration, the lower courts will follow substantially the same analysis used by the Supreme Court. *Harmon* v. *Thornburgh*, 878 F.2d 484 (D.C.Cir. 1989) (random testing of employees holding top secret security clearances is justified); *National Federation of Federal Employees* v. *Cheney*, No. 88–5080 (D.C.Cir., August 29, 1989) (random testing of certain civilian employees of the Army is reasonable); *American Federation of Government Employees* v. *Skinner*, No. 87–5417 (D.C.Cir., September 8, 1989) (random testing of DOT employees with safety-sensitive jobs is constitutional). The *Von Raab* and *Skinner* cases establish that if the Government can show that the testing program is reasonable, drug testing is permissible without a warrant, without probable cause, and without particularized suspicion.

In *Skinner*, the Court considered several factors in weighing individual privacy interests against the Government's objectives. The D.C. Circuit enumerated these factors, including "(1) the 'limited' intrusions occasioned by the testing procedures; (2) the diminished expectation of privacy that attaches to employment in an 'industry that is regulated pervasively to ensure safety'; and (3) the government's 'compelling' or 'surpassing' interest in railway safety." *Cheney*, slip. op. at 10 (citations omitted). These factors are directly relevant to the pipeline anti-drug rule. The same "limited" intrusions occasioned by the testing procedures are present in Part 199, which mandates use of 49 CFR Part 40, "Procedures for Transportation Workplace Drug Testing Programs" (DOT Procedures) (54 FR 49854, December 1, 1989). The DOT Procedures are modeled after and closely conform to the rigorous standards and procedures imposed by the Department of Health and Human Services (DHHS) for drug testing of federal employees (published at 53 FR 11970, April 11, 1988). In addition, the pipeline industry has been and is regulated pervasively to ensure safety so that a diminished expectation of privacy attaches to employment.

Finally, the Government has an obviously compelling interest in pipeline safety. Although pipelines have an excellent safety record, there are still deaths and injuries each year occurring as a result of pipeline accidents. Moreover, there is the potential for a catastrophic accident. Pipelines are often located in populated areas, near schools, homes, and industry, and adjacent to public rights-of-way. RSPA believes the categories of pipeline employees covered by the rule are appropriate in light of the recent court decisions. Employees performing regulated operation, maintenance, and emergency response functions may directly affect the safety of those who work or live near the pipeline.

RSPA does not agree with petitioners' concerns that the rule may result in a violation of employees' Fifth Amendment due process rights. In any event, the concerns are premature for employees may always challenge their removal from a safety-related position at the time it occurs. When RSPA determines that a generally applicable rule is necessary for safety reasons, that determination overrides inconsistent terms of labor-management agreements.

Post-Accident Testing. AGA indicated that AGA members are concerned about DOT's institution of a separate category for post-accident testing. AGA indicated that post-accident testing should be based on reasonable suspicion. AGA pointed out that in *Burnley*, the Ninth Circuit Court held that post-accident testing was permissible only when accompanied with reasonable suspicion.

Since the final rule was published, RSPA has received numerous requests to clarify the post-accident testing requirements in the event an employee is injured or unconscious.

RSPA Response. The Supreme Court decision in *Skinner* held that particularized suspicion was not required. RSPA believes that post-accident testing should be retained as a separate category because of the programmatic need to evaluate the factors in pipeline accidents. Accident investigation enables RSPA to examine its regulatory program and an operator's compliance to determine if changes are needed to enhance safety.

In response to the requests for clarification, RSPA has revised the post-accident testing requirement in 49 CFR 199.11(b) to clarify that all reasonable steps must be taken to obtain a urine sample if an employee is injured, unconscious, or otherwise unable to evidence consent to the drug test. These reasonable steps include the following procedures. Any injury to an employee should be treated first. The operator should notify the hospital of the need for a specimen. If the employee is injured or unconscious and unable to consent to a urine sample, the operator should wait until the treating physician determines the employee is able to understand a request to provide a sample.

Reasonable Cause Testing. AGA believes that if DOT is concerned with protecting the public safety by eliminating drug impaired employees from safety-sensitive positions, it should eliminate the reasonable cause standard and substitute the reasonable suspicion standard. AGA asserts that the reasonable cause standard is stricter, and requires that there be reasonable grounds for suspecting that a drug test will reveal evidence of drug abuse on the job. AGA contends that the reasonable suspicion standard, by contrast, would permit testing based upon observations of an employee's performance.

In addition, AGA opposes DOT's requirement that large operators with 50 or more employees have at least two of an employee's supervisors substantiate and concur in the decision to test the employee under the "reasonable cause" category as unnecessary and burdensome because of the subjective nature of reasonable cause testing. AGA argues that reasonable cause testing will be subjective regardless of the number of supervisors who concur in a decision to test. The findings of one properly trained supervisor, AGA argues, should be sufficient to initiate reasonable cause testing of an employee.

AGA noted that it supports the exception that an operator with 50 or fewer employees need only obtain the opinion of *one* trained supervisor to initiate reasonable cause testing and fails to see a clear distinction between the subjective nature of reasonable cause testing when applied by large or small operators.

AGA proposes that if RSPA retains the requirement that two or more supervisors substantiate and concur in a decision to test the employee of a large operator, RSPA should incorporate in

the rule language used in the preamble to the final rule to clarify that the concurrence between two supervisors may be made by telephone.

El Paso objected to the requirements for reasonable cause testing because RSPA failed to take into consideration that there may be locations where no supervisor is available, and there may be evidence of drug use other than by observable individual impairment, or behavior, such as possession of "roach clips" (marijuana smoking devices), information supplied by other employees, etc. El Paso noted that the rule precludes testing entire locations upon receipt of information that drug use is occurring. El Paso stated that it has found that drug testing of entire locations upon receipt of information concerning drug use is a demonstrated effective deterrent.

El Paso suggested "that DOT revise its regulations to permit reasonable cause testing of an individual based on documented observable performance or behavior by a supervisor based on information received either from within or outside its workforce of possible drug use." El Paso further suggested that the required concurrence of a second supervisor should be deleted from the rules and that such testing should require only the authorization of a member of the operator's management.

RSPA Response. RSPA agrees with the petitioners that the reasonable cause drug testing requirements should be clarified to incorporate language used in the preamble to the final rule, regarding the concurrence of two supervisors by telephone, and has modified 49 CFR 199.11(d) accordingly. RSPA does not agree, however, that this category of testing should be labeled reasonable suspicion. We have defined the conditions under which the test is performed and the label is, therefore, irrelevant. We see no basis for changing the conditions. Furthermore, while a determination to test based on reasonable cause will always be subjective to some extent, requiring two supervisors to concur lessens the subjectivity involved and the potential for harassment. The exception allowing employers with 50 or fewer employees to have only one supervisor substantiate the decision to test based on reasonable cause was provided to recognize that employees of smaller operators in many cases will not have two supervisors. The potential for a subjective judgment is no less real with a small operator, but the reality of the workplace dictated that RSPA make some provision for these operators.

With regard to El Paso's suggestions, evidence of illegal drug use, such as drug paraphernalia, or information received from a third party may certainly be considered in making a determination of reasonable cause, but neither should be the sole basis for making such a determination. Further inquiry must be made and the supervisor must conclude that there are objective factors indicative of probable drug use. RSPA believes that the concurrence of two of the employee's supervisors is necessary to lessen the possibility of an arbitrary determination and the potential for harassment. Requiring two supervisors in an employee's chain of command, rather than simply another member of the operator's management, provides an additional safeguard in that those supervisors are more likely to be familiar with the employee's work history and behavior. Accordingly, RSPA has not revised this portion of the rule except as noted above.

Statutory Authority. Tenneco, AGA, and INGAA argued that the Department does not have statutory authority to regulate the employees or the way in which they conduct their personal lives. Tenneco stated that neither the Natural Gas Pipeline Safety Act of 1968, its legislative history, nor any prior or existing regulations evidence any intent or purpose to regulate the physical or mental attributes, or conduct of employees other than to require that the product of their efforts be satisfactory.

RSPA Response. The two primary statutes under which RSPA administers the pipeline safety program are the Natural Gas Pipeline Safety Act of 1968, as amended (49 App. U.S.C. 1671 *et seq.*) and the Hazardous Liquid Pipeline Safety Act of 1979, as amended (49 App. U.S.C. 2001 *et seq.*). RSPA also regulates operators of offshore gas gathering lines under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 *et seq.*).

Authority to implement drug education, awareness, and testing programs is derived from the broad authority granted in the above cited statutes. This authority is applicable to various aspects of pipeline facilities affecting pipeline safety, including "design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities," 49 App. U.S.C. 1672 and 2002. Under this authority, RSPA can set qualifications, such as experience and training, for pipeline personnel. This authority extends to allow RSPA to mandate certification programs for such personnel. Section 101 and 201 of Public Law No. 100-561, enacted October 31, 1988.

Administrative Procedure Act (APA). Tenneco, AGA, and INGAA pointed out that the Act also requires the Secretary to consider:

(a) Relevant available pipeline safety data;

(b) Whether such standards are appropriate for the particular type of pipeline transportation or facility;

(c) The reasonableness of any proposed standards; and

(d) The extent to which such standards will contribute to public safety.

According to these petitioners, the Department acted outside its authority by failing to consider any of these factors in promulgating the final rule. Petitioners contention, however, is, at bottom, an argument that the rule is arbitrary and capricious. These petitioners argue that RSPA has not considered available pipeline safety data, has no evidence of a drug problem in the natural gas industry, and has acknowledged the excellent safety record of the industry.

Tenneco pointed out that the Department's safety data demonstrates the absence of any kind of a safety problem, and a complete dearth of safety problems relating to illicit drug use. According to Tenneco, considering the stringent pipeline pressure testing and inspection regulations which protect the integrity of the pipeline from a theoretically impaired employee, the extensive drug testing regulations are neither appropriate nor needed for any pipeline facility.

Tenneco indicated that some of the unreasonable burdens the Secretary failed to consider in promulgating this rule include (1) the regulations' conflict with state laws that prohibit random testing of employees; (2) civil liability, not only for the operator's employees but for contractor's employees; (3) the attenuated or piggyback jurisdiction in requiring operators to require random testing of independent contractors; and (4) the high cost to the industry without any corresponding benefit to the industry.

AGA, MidCon and Tenneco objected that the final rule is arbitrary and capricious in violation of the APA because RSPA assumed that there was a drug problem in the pipeline industry even though RSPA did not provide any evidence of a drug problem in the industry, and RSPA did not distinguish between the safety records of the various transportation industries. The petitioners particularly objected to the random testing requirements of the

regulation. Tenneco stated that RSPA's assumption that the problem of drug abuse exists in the pipeline industry in similar proportion to that existing in society as a whole is unsupported by the evidence. Tenneco contended that although the regulations could conceivably deter the small percentage of pipeline employees who may use drugs, they will not significantly increase safety because the test does not measure impairment. Since testing does not measure impairment, Tenneco contends, the regulation does not have a sufficient nexus to the government's legitimate concern and is therefore arbitrary. AGA argued that RSPA has no justification for imposing mandatory random testing on the pipeline industry because, unlike the other industries covered by the DOT rules, pipelines have an excellent safety record, do not carry people, and are located underground. AGA also contended that pipeline employees are highly supervised and frequently work in teams, making it less likely that an impaired employee could endanger the public. Moreover, AGA stated, most pipeline accidents are caused by third party excavators over which operators have little control. Finally, AGA argued that the examples RSPA used to discount the above factors; i.e., the 1987 train accident in Chase, Maryland, and the nuclear power industry, where the Nuclear Regulatory Commission had found evidence of drug-related accidents, do not support its position. AGA contended, therefore, that the final rule is arbitrary because RSPA could find no evidence of drug-related accidents in the natural gas industry.

RSPA Response. Part 199 established standards for ensuring that operator personnel who perform functions directly affecting the safety of pipeline transportation are free of drug-induced impairment. In promulgating Part 199, RSPA considered all of the required statutory criteria. RSPA acknowledged the excellent safety record of the industry, but concluded that the potential for harm was serious enough to warrant an anti-drug rule. Faced with substantial evidence of a societal drug problem, RSPA cannot ignore its responsibility to the public. The Supreme Court has held that the existence of a drug problem within a particular workplace is not a prerequisite for an anti-drug program. *Von Raab*, 109 S. Ct. at 1395. The pipeline anti-drug program is limited to those employees who may directly affect safety, and the standards and procedures are designed both to protect employees' privacy and to detect illegal drug use. With respect to Tenneco's contention concerning pressure testing and inspection, RSPA does not believe that these measures are sufficient to counteract the behavior of a drug-impaired employee. Pressure testing and inspection are conducted principally at the time of initial construction and detect flaws in the pipeline. After that time, many other factors, including human error, come into play in the operation of a pipeline. RSPA concluded, based on the record evidence and after considering public comments, that part 199 is the minimum standard needed under the circumstances to deter drug use in the pipeline industry. The petitioners have not advanced any arguments or information to convince us otherwise.

With regard to possible conflicts with state laws that prohibit random testing of employees, part 199 preempts, under the Supremacy Clause of the U.S. Constitution, any state or local law, rule, regulation, order, or standard that covers testing of pipeline employees for the presence of drugs or drug metabolites. This preemption exists to the extent that the state or local law interferes with implementation of the federal law. The rule does not preempt any state law that imposes sanctions for the violation of a provision of a state criminal code related to reckless conduct leading to actual loss of life, injury, or damage to property, whether such provisions apply specifically to pipeline employees or generally to the public.

The purported burdens of extending these regulations to contractor personnel are discussed later in this preamble under "Contractor Responsibility."

Finally, regarding Tenneco's comments about the burdens of these regulations because there is no corresponding benefit to the industry, RSPA concluded that these rules will result in a benefit to the public. The Final Regulatory Evaluation, filed in the docket, shows that benefits will exceed costs for these regulations.

RSPA has already responded to petitioners' arguments concerning the safety record of the pipeline industry and the evidence of a drug problem in the industry. Petitioners' arguments are no more persuasive in the APA context than in the constitutional context.

Regarding impairment, the Supreme Court has indicated that urinalysis testing, while it may not detect impairment, serves to deter it. *Von Raab*, 109 S. Ct. at 1393. The D.C. Circuit, following this reasoning, has rejected arguments that urinalysis testing is unconstitutional because it does not differentiate on- and off-duty impairment. *AFGE*, slip. op. at 25. A primary purpose of Part 199 is to deter illegal drug use that could compromise safety.

Regarding the differences between the pipeline industry and other transportation industries, RSPA acknowledged the fact that the pipeline industry does not transport people. The functions performed by pipeline employees, however, can directly affect the physical safety of people who live or work near the pipeline. The D.C. Circuit has upheld random testing of DOT hazardous materials inspectors (who do not transport people) because their "assigned duties require exposure 'to poisonous, explosive, and highly flammable commodities that could be * * * suddenly ignited by improper handling.' " *AFGE*, slip. op. at 14. Similarly, pipeline employees performing operation and maintenance functions may work in close proximity to, or otherwise affect, natural gas, gasoline, oil, and other hazardous materials which are explosive, flammable, or combustible, and pose great risks to personal and public safety.

The D.C. Circuit has also rejected arguments that drug testing is unreasonable because a system of safeguards and supervision can abate the risks posed by a drug-impaired employee, relying on the Supreme Court's decision in *Skinner* that the reasonableness of a particular technique does not depend on the existence of other alternatives the agency might have considered. *Chenev*, slip. op. at 15–16.

Random Testing—Non-Constitutional Issues. Issues raised by petitioners concerning the constitutionality or record support for random testing are discussed under "Constitutional Issues" or "Administrative Procedure Act."

AGA stated that mandatory random testing would impose a financial burden on employers, and asserted that RSPA did not conduct an adequate economic evaluation. The AGA indicated that RSPA did not distinguish the costs of testing between its own federal employees (where the costs of drug testing were obtained) and the other industries covered by the rule. In addition, AGA argued that RSPA did not adequately include all of the very significant costs of transporting workers to test sites, travel time for the employee being tested, lost productivity of workers being tested, the costs of maintaining an EAP, or the costs and procedures incurred by the Medical Review Officer. AGA also said that the Technical Pipeline Safety Standards

Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee voted against random testing and RSPA's published reasons for rejecting the Committees' recommendations were short, cursory, and merely referred to the Department's earlier responses to AGA and other commenters.

El Paso Natural Gas Company (El Paso) questioned whether the 50 percent rate of random testing is justified. El Paso stated that the 50 percent random testing rate was established because it is the rate established by DOT for its own employees and there is no evidence supporting any particular level of testing.

El Paso suggested that DOT revise its regulations to allow the operator to determine the level of testing deemed appropriate for its workforce, with a minimum of no more than 15 percent of the operator's covered employees.

El Paso is also concerned about the requirement to randomly select employees for testing by using a random number table or a computer-based number generator. El Paso's concern is that the random testing prescribed by the RSPA regulation would preclude testing an entire geographic location at one time and the regulations would require that the selected employees must be transported to the collection facility for each random test.

RSPA Response. As discussed in the preamble to the final rule, RSPA believes that unannounced testing based on random selection is an essential component of an effective drug testing program. Unannounced random testing has proven to be an effective deterrent to drug use and will provide safety benefits to the pipeline industry by reducing or eliminating drug use by pipeline personnel. Unannounced random testing programs initiated by the military, including the Coast Guard, and private industry show declining drug use, evidenced by a decrease in the number of individuals who test positive for drugs, over the course of the drug testing program.

Random selection avoids potential bias toward, and selective harassment of, an employee because every employee has an equal chance for selection at any time. Random selection is usually accomplished through scientifically accepted methods, such as the use of a random-number table or computer-based, random-number generator. Both methods select individuals by matching these randomly selected numbers against an employee's social security number or payroll account number. With random testing, abstinence is the only alternative to possible detection. Using a true random selection basis, employees selected for each weekly or monthly increment would be returned to the pool of those eligible for testing and would be subject to reselection. The vulnerability for reselection deters drug use because an individual selected early in the testing cycle would still be subject to testing throughout the remainder of the year and would still risk detection if he or she used drugs after the first test.

RSPA reiterates that a 50 percent testing rate is necessary to establish a valid confidence level as well as to provide an adequate deterrent to drug use by employees. During the comment period on the proposed rule, RSPA requested specific advice on what the random testing rate should be. Although many commenters suggested rates of 10–20 percent, none provided any data to support a particular level. RSPA, therefore, chose a random testing rate of 50 percent in part based on DOT's experience with its own internal drug testing program, as well as the rates used by the military services. Although the military had used higher rates to achieve the deterrent affect referred to above, RSPA believed that the 50% rate offered a sufficient balance between a rate high enough to deter use while keeping costs reasonable. At this time, petitioners have not presented any information to warrant changing the rate. RSPA committed in the preamble to the final rule to analyzing random drug testing data after the program goes into effect to determine if the random testing program should be revised, including a revision of the random testing rate. RSPA has made one change to the rule to clarify that random testing is to be conducted at a rate equivalent to 50 percent of covered employees. While the preamble to the final rule was clear, the existing rule language, read literally, could have been interpreted to require the actual testing of half the operator's covered employees.

All employees subject to the anti-drug program must be included in the random testing pool. The selection method must ensure that all eligible employees have an equal probability of selection. Operators may randomly select sites and may test either all, or a predetermined percentage, of the eligible employees at the location. If an operator randomly selects a site for testing, the operator has to be very careful that there is no discrimination, for example, either for or against a particular group of employees because of their work schedules (e.g., shift workers or a core office staff that support other employees that are out in the field).

RSPA rejected the recommendations of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee that random testing be eliminated. The reasons given by RSPA for rejecting the advice given by these two advisory committees was that RSPA believes that random testing is a critical component of an anti-drug program and that a 50 percent drug testing rate is necessary to establish a valid confidence level as well as to provide a sufficient deterrent to drug use by employees. RSPA further stated that the 50 percent random testing rate will not impose an undue economic or administrative burden on operators and employees.

RSPA believes that the reasons given by RSPA for rejecting the Committees' recommendations were sufficient in light of the detailed and lengthy discussion on random testing set forth earlier in the final rule. The discussion set forth above also reiterates the earlier RSPA position on random testing and all of these arguments are equally applicable to the reasons for rejecting the Committees' recommendations to delete random testing from the anti-drug program. RSPA's commitment in the preamble to the final rule to analyze random drug testing data after the program goes into effect to determine if the random testing program should be revised is equally applicable to responding to the Committees' concerns regarding random drug testing.

Contractor Responsibility. AGA objected that although the final rule permits the operator to contractually require that the contractor implement its own drug program, the operator is still responsible for ensuring that the contractor comply with DOT regulations. According to AGA, this imposed duty to monitor the contractor means that while the operator does not conduct the testing, it must oversee and inspect the operations of another company. AGA argues that given the nature of the pipeline industry's operations and use of contractors and subcontractors without permanent work forces, it is unreasonable to make operators responsible for ensuring that contractors test their employees.

AGA provided an example of a large midwestern distribution operator that employs seven contractors. At any one time, those contractors provide workers equivalent to the operator's permanent workforce so that the operator's responsibility for providing a drug-free environment is doubled. In addition, the contractors typically hire workers from a labor pool and therefore have no

advance knowledge of which workers will be used on a given day. AGA stated that monitoring a drug testing program under those circumstances would be nearly impossible.

PG&E and MidCon made similar arguments regarding contractor employees, stating that including the contractor employees in a drug testing program, a program which their employees must administer, will result in extraordinary expense and operational delays. El Paso also raised this issue and suggested a revision to § 199.21(a) to require that the operator provide by contract that the contractor carry out the provisions of the rule, and provide written documentation of its compliance.

RSPA Response. RSPA noted, in the preamble to the final rule, that pipeline operators who choose to use contractors to perform their safety-related work have always been held responsible for compliance just as if the operator's own employees were performing the work. Furthermore, an operator can require a contractor to implement its own drug program and, as long as the operator is diligent about monitoring the contractor's compliance, the operator should be protected from civil liability. In addition, as noted in the preamble to the final rule, limiting the final rule to certain covered functions should minimize the impact on operators who hire unskilled contract laborers. In the example posed by AGA, it is not clear that those contract employees would be performing covered functions. If they were, however, the operator may insist as part of the contract that the contractor implement a drug program and test the entire pool of available workers. Based on a thorough review of this issue, RSPA believes that contractors must be covered and that operators must be responsible for the work performed by contractors. The performance of contract employees in covered positions is no less critical to safety than the performance of the operator's own employees.

Collective Bargaining. AGA argued that the final rule is in direct conflict with collective bargaining requirements. AGA stated that since DOT concedes that drug testing is a mandatory subject of collective bargaining agreements under section 8(b) of the National Labor Relations Act, the operator may not be able to impose the DOT regulations in their entirety on a unilateral basis. AGA stated that even with a delay in the effective date to allow more time for negotiation, DOT's rigid regulatory criteria will make it difficult for employers to bargain in good faith. AGA recommended, therefore, that operators be granted flexibility in the design and implementation of their drug testing programs.

The United Steelworkers of America, AFL–CIO (USWA) supported the petition for reconsideration filed by AGA. While the USWA did not concur with each of the specific objections of AGA, USWA believes that the AGA petition is an accurate reflection of the problems with the regulation. The specific example cited was with regard to the issue of the need for collective bargaining, since many of the USWA contracts with the gas industry expire in 1990 and 1991. USWA requested that the effective date of the regulations be stayed until all administrative and legal action on these regulations are concluded, and at least until 1991 to revise or adopt collective bargaining contracts.

RSPA Response. RSPA believes that the regulations in Part 199 provide operators sufficient flexibility in the design and implementation of the drug testing programs to be able to bargain in good faith. Drug programs can be tailored to meet the specific requirements of management and labor.

Moreover, the time provided for implementation of these drug regulations offers sufficient time to revise or adopt collective bargaining agreements. RSPA believes that sufficient modifications to existing collective bargaining agreements can be made to permit a transition until 1990 and 1991 when the existing contracts will expire. More importantly, RSPA safety regulations override collective bargaining agreements. The fact that a matter is a mandatory subject of collective bargaining means that the employer cannot unilaterally impose a requirement for testing. However, when a Federal regulation imposes a legal burden on the employer or employee, they must comply.

Medical Review Officer. AGA objected to the Medical Review Officer (MRO) process because they assert that they did not have an opportunity to comment on the need for or responsibilities of an MRO in the NPRM.

AGA believes that the RSPA requirement for an MRO expands the role of the MRO as established in the DHHS Guidelines. AGA also indicated that many operators would have to appoint numerous MRO's at great expense because of the numerous geographic locations of an operator's facilities.

AGA also stated that requirements for the MRO's are written in prescriptive language and urged RSPA to adopt performance language. AGA stated that the requirement that an MRO be a licensed physician is too restrictive and urged RSPA to permit operators to use a qualified person, such as an EAP counselor or industrial nurse, who is knowledgeable about drug abuse. Finally, AGA asked for clarification of whether an individual who fails a pre-employment drug test is subject to the MRO review process.

AGA requested that RSPA clarify whether individuals who are actually hired who: (1) Fall within the pre-employment testing category and (2) also test positive for drug use are included within the lengthy MRO review and interview procedures for "employees" described in § 199.15. AGA noted that RSPA stated in the preamble that "* * * an employer may not hire * * * anyone to perform certain functions until he or she has passed a drug test." Thus, it is unclear to AGA whether an individual described above is an employee for purposes of MRO review. AGA stated that many natural gas operators refuse to hire employment applicants who test positive and these operators should not be burdened with the requirement of providing expensive MRO services to employment applicants who test positive.

MidCon also raised some of the same arguments as AGA, particularly with respect to the cost of MRO's and the need for operators to employ several MRO's due to the numerous and often remote locations of manned facilities. El Paso stated that some of the duties ascribed to the MRO are more appropriately the responsibility of the operator's EAP counselor or Human Resources Officer. El Paso proposes that an EAP counselor should interview an employee about a confirmed positive test and determine the rehabilitation program required in each case, as well as determine when an employee may return to duty. El Paso suggested that, at most, the MRO interpret the results of a confirmed drug test and that all other duties be the responsibility of the operator's EAP counselor, with the exception of scheduling random testing.

RSPA Response. The preamble to the Notice of Proposed Rulemaking (53 FR 25892, July 8, 1988) stated that "testing would be required to be carried out according to the DHHS guidelines. Each operator would be required to make sure that any testing conformed to these guidelines." 53 FR 25898. The proposed rule included a notice that the guidelines were available for inspection and copying at RSPA. Commenters thus had the opportunity to comment on the MRO requirements.

RSPA does not agree that the final rule expanded the role of the MRO as established in the DHHS Guidelines. Section 199.15 conforms to the MRO duties in section 40.33 of the DOT Procedures, which are based on the DHHS Guidelines.

Section 199.15 retains the requirement that the MRO be a licensed physician because it requires a physician's medical training with knowledge of substance abuse disorders to interpret an individual's positive test to determine whether an employee who refused to take or did not pass a drug test may return to duty. This requires the skills of a licensed physician to determine whether there is a legitimate medical explanation, including the use of a legally prescribed medication, for the positive test result of an individual. Other duties of the MRO are to receive the results of all drug tests from the laboratory and verify that the laboratory report and assessment of drug test results are correct. The MRO's function with respect to negative tests is merely to provide an administrative review to be sure that chain of custody requirements have been met. This responsibility of the MRO is important to assure that the MRO is cognizant of all drug tests to determine the reasonableness of the overall drug test results of the operator's personnel. The MRO must report the results of each test to an individual designated by the operator to receive such information.

RSPA does not envision that an operator would need to hire multiple MRO's to serve at various locations. An MRO need not be physically present at a particular location to perform his or her duties. For example, an MRO can confer by telephone with an individual to determine if there is a legitimate explanation for a positive result from the laboratory.

In response to AGA's request for clarification, all testing performed under Part 199 must be performed in accordance with the DOT Procedures to ensure that test results are not misused. This means that if an individual is pre-employment tested, the sample must be collected in accordance with the DOT Procedures, subjected to an initial test at an approved laboratory, and if the initial test is positive, subjected to a confirmatory test using gas chromatography/mass spectrometry. If the sample is then confirmed positive, the result must be reported to the MRO for verification of the positive test result, including giving the individual an opportunity to discuss the test results with him or her. If the MRO then verifies the test as positive, the MRO reports the test result to the operator. The operator then may not hire the applicant for a covered position and may decline, at the operator's sole discretion, to hire the applicant for a non-covered position. It is necessary to have MRO involvement even for preemployment tests because applicants who have legitimate explanations for positive tests should not be deprived of an opportunity for a job.

Finally, § 199.11(e) has also been revised and retitled "Return to duty testing" because of the other deletions involving rehabilitation that are made in this document. Similar to the other deletions regarding rehabilitation, since the final rule does not require the operator to provide an opportunity for rehabilitation, it is inappropriate to base the "return to duty testing" in § 199.11(e) on an employee undergoing rehabilitation. This section has been further revised to include the duty of the MRO to determine whether and when an employee may return to duty. In addition, the definition of "Rehabilitation committee" in § 199.3 is deleted because the requirement to establish such a committee was deleted in the final rule.

Use of Drug Test Results in Arbitration and/or Wrongful Discharge Suits. The final rule limits release of an individual's drug test results to two cases: Upon written consent of the individual, or as part of an accident investigation. AGA requested that DOT create an additional exception in § 199.23(b) that information regarding an employee's drug test results may be used by the operator-employer in its defense in the event of a challenge. It appears to AGA that an employer who disciplines or discharges an employee with a positive drug test result does so at the risk of defending itself in an arbitration and/or wrongful discharge suit without the benefit of such test results. AGA believes that the regulations should allow an operator-employer access and use of those test results to defend itself in the event of such a challenge. AGA believes that the requested exception is consistent with § 40.29(n)(5) of the DOT Procedures. That section provides that a laboratory should have qualified personnel available to testify in an administrative or disciplinary proceeding against an employee when that proceeding is based on positive urinalysis results reported by the laboratory.

RSPA Response. RSPA agrees with AGA that the DOT Procedures contemplate that an employer should be able to use information regarding an individual's drug test results in the event of a challenge. RSPA has not amended its rule, however, because this issue is addressed in the final rule responding to comments on the DOT Procedures (54 FR 49861).

Executive Order 12291 and the Paperwork Reduction Act. INGAA asserted that ignoring burdens such as paperwork, liability for contractors, potential conflict with collective bargaining agreements, and compliance with the DOT Procedures, and by failing to show a need for the final rule, RSPA ran afoul of Executive Order 12291, which requires, inter alia, that:

(a) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;

(b) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;

(c) Regulatory objectives shall be chosen to maximize the net benefits to society;

(d) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and

(e) Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

INGAA stated that RSPA failed to determine that there is a need for drug testing in the pipeline industry. Accordingly, RSPA failed to identify any benefit which would outweigh the burdens imposed by the final rule, thus defeating the Presidential policy of "reduc[ing] the burdens of existing and future regulations, increas[ing] agency accountability for regulatory actions * * * and insur[ing] well-reasoned regulations."

INGAA set forth a list of burdens which it believes outweigh the benefits of the anti-drug program. The burdens include: assuming responsibility for testing contractors, contractors' employees and subcontractors; establishing at least one collection site with all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping of urine specimens to a certified drug testing laboratory; hiring a "collection site person" to collect urine samples; having a supervisor available to the collection site person; providing transportation of urine samples from the collection site to

the laboratory; arranging to have urine samples tested at a certified laboratory; and hiring a "Medical Review Officer," a licensed physician with knowledge of substance abuse, to review laboratory results.

AGA stated that RSPA had not justified the need for the final rule, and did not address the administrative and financial burdens imposed by the final rule, concerning contractor employees, MRO procedures, chain of custody forms, written instructional materials for employees, testing, and permanent records of all tests. AGA also asserted that RSPA had not complied with the Paperwork Reduction Act. AGA noted that RSPA had not obtained the required clearance of the Office of Management and Budget (OMB) when the final rule was published in the **Federal Register.**

AGA also identified as another burden the potential conflicts between the final rule and collective bargaining agreements or other employment contracts.

RSPA Response. RSPA carefully considered all of the burdens raised by AGA and INGAA in developing the final rule. The Final Regulatory Evaluation was based on the costs associated with implementing the DOT drug testing program, a program with widely dispersed geographic specimen collection site locations and took into account all of the associated administrative costs, implementation costs, and paperwork costs of carrying out the anti-drug program.

With regard to the AGA and INGAA concerns regarding the widely dispersed geographic collection site locations, RSPA contacted INGAA, AGA, and the American Petroleum Institute regarding the approximate number of pipeline personnel working in each segment of the industry. From this information, RSPA considered that about two-thirds of pipeline personnel subject to these regulations work for distribution operators, and the other one-third work for transmission operators. In addition, about 85 large distribution operators, which serve over 85 percent of the U.S. gas consumers, are located in metropolitan areas, and most of the transmission operators, both hazardous liquid and natural gas, are headquartered in metropolitan areas. Therefore, RSPA believes that about 85 percent of personnel working for distribution operators and over half of the personnel working for transmission operators are in metropolitan areas and not in widely dispersed geographic locations.

The recordkeeping and reporting requirements of the final anti-drug rule were approved by OMB (OMB No. 2137-0579) in accordance with the Paperwork Reduction Act of 1980.

AGA's issue regarding collective bargaining agreements is discussed under "Collective Bargaining."

Prohibited Drugs. El Paso stated that in addition to the five drugs listed in the final rule it also tests for barbiturates, benzodiazepine, methadone, methaqualone, and opiate derivatives including codeine and heroin. El Paso believes that the five drugs listed in the rule are an appropriate minimum, but because operators may need to tailor their drug screening to the demographics of their workforce, they should be permitted to test for other drugs without being required to seek prior approval from RSPA, and without obtaining a second sample from the employee.

RSPA Response. In accordance with the DOT procedures, RSPA may not grant requests to test for additional drugs unless and until the DHHS has established collection and testing procedures and positive thresholds for the drugs to be added. The DHHS has not established collection and testing procedures applicable to additional drugs, so RSPA cannot provide for the testing of additional drugs at this time. This issue is addressed more fully in the final rule on the DOT Procedures (54 FR 49854). It should be noted that the rule does not prohibit an operator from testing for other drugs if the operator has the independent legal authority to do so and it obtains a second sample.

Miscellaneous Clarifying Changes. Section 199.7 has been changed to clarify that the anti-drug plan must contain procedures for notifying employees of the coverage and provisions of the plan. The discussion in the preamble to the final rule covered this issue but addressing it in the regulations clarifies the requirement.

Section 199.9(b) has been revised to delete references in the rule regarding the requirement for an employee to complete a rehabilitation program before returning to duty. The proposal to require the operator to provide an opportunity for rehabilitation was deleted from the final rule and such rehabilitation is left to the discretion of the operator. This clarifying revision now provides that an employee may return to work after passing a drug test and when the MRO has recommended to the operator that the employee may safely be returned to his or her job.

Economic Assessment

In accordance with the requirements of Executive Order 12291, RSPA reviewed the costs and benefits of the final anti-drug rule published on November 21, 1988. At that time, RSPA prepared a Final Regulatory Evaluation of the final rule. RSPA included that evaluation in the public docket. RSPA also summarized and analyzed the comments submitted by interested persons on the economic issues in the final rulemaking document.

This final rule does not change the basic regulatory structure and requirements promulgated in the final rule and therefore RSPA anticipates little or no costs associated with these minor changes.

Because any potential difference in costs and benefits would be minimal, RSPA has determined that revision of the Final Regulatory Evaluation for the final anti-drug rule is not necessary and preparation of a separate economic analysis is not warranted. This final rule will not result in an annual effect on the economy of $100 million or more and will not result in a significant increase in consumer prices; thus, the final rule is not a major rule pursuant to Executive Order 1229. However, the final anti-drug rule is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) because it involves issues of substantial interest to the public.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a federal agency to review any final rule to assess its impact on small business. RSPA certifies that the amendments contained in this final rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The recordkeeping and reporting requirements of the final anti-drug rule published on November 21, 1988, previously were submitted to the Office of Management and Budget (OMB) and approved in accordance with the Paperwork Reduction Act of 1980. Because this final rule does not amend the recordkeeping and reporting requirements, it is not necessary to amend the prior approvals received from OMB.

Federalism Implications

The final rule adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, RSPA has determined that this final rule does not have sufficient federalism implications

to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 199

Pipeline safety, Drug testing.

In consideration of the foregoing, RSPA amends 49 CFR part 199 as follows:

PART 199—DRUG TESTING

0. The authority citation for part 199 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, 2002, and 2040; 49 CFR 1.53.

§ 199.3 [Amended]

1. In § 199.3, the definition of "Rehabilitation committee" is removed.

2. Section 199.7 is revised as follows:

§ 199.7 Anti-drug plan.

Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this part and the DOT Procedures. The plan must contain—

(a) Methods and procedures for compliance with all the requirements of this part, including the employee assistance program;

(b) The name and address of each laboratory that analyzes the specimens collected for drug testing;

(c) The name and address of the operator's medical review officer; and

(d) Procedures for notifying employees of the coverage and provisions of the plan.

3. Section 199.9 is amended by revising paragraph (b) to read as follows:

§ 199.9 Use of persons who fail or refuse a drug test.

* * * * *

(b) Paragraph (a)(1) of this section does not apply to a person who has—

(1) Passed a drug test under DOT Procedures;

(2) Been recommended by the medical review officer for return to duty in accordance with § 199.15(c); and

(3) Not failed a drug test required by this part after returning to duty.

4. Section 199.11 is amended by revising paragraphs (b) through (e) to read as follows:

§ 199.11 Drug tests required.

* * * * *

(b) *Post-accident testing.* As soon as possible but no later than 32 hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. If an employee is injured, unconscious, or otherwise unable to evidence consent to the drug test, all reasonable steps must be taken to obtain a urine sample. An operator may decide not to test under this paragraph but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.

(c) *Random testing.* Each operator shall administer, every 12 months, a number of random drug tests at a rate equal to 50 percent of its employees. Each operator shall select employees for testing by using a random number table or a computer-based random number generator that is matched with an employee's social security number, payroll identification number, or other appropriate identification number. However, during the first 12 months following the institution of random drug testing under this part, each operator shall meet the following conditions:

(1) The random drug testing is spread reasonably through the 12-month period;

(2) The last test collection during the year is conducted at an annualized rate of 50 percent; and

(3) The total number of tests conducted during the 12 months is equal to at least 25 percent of the covered population.

(d) *Testing based on reasonable cause.* Each operator shall drug test each employee when there is reasonable cause to believe the employee is using a prohibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two of the employee's supervisors, one of whom is trained in detection of the possible symptoms of drug use, shall substantiate and concur in the decision to test an employee. The concurrence between the two supervisors may be by telephone. However, in the case of operators with 50 or fewer employees subject to testing under this part, only one supervisor of the employee trained in detecting possible drug use symptoms shall substantiate the decision to test.

(e) *Return to duty testing.* An employee who refuses to take or does not pass a drug test may not return to duty until the employee passes a drug test administered under this part and the medical review officer has determined that the employee may return to duty. An employee who returns to duty shall be subject to a reasonable program of follow-up drug testing without prior notice for not more than 60 months after his or her return to duty.

5. Section 199.15 is amended by republishing paragraph (c) introductory text and by revising paragraphs (c)(3), (c)(4), and (c)(5) to read as follows:

§ 199.15 Review of drug testing results.

* * * * *

(c) *MRO duties.* The MRO shall perform the following functions for the operator:

* * * * *

(3) Determine whether and when an employee who refused to take or did not pass a drug test administered under DOT Procedures may be returned to duty.

(4) Determine a schedule of unannounced testing, in consultation with the operator, for an employee who has returned to duty.

(5) Ensure that an employee has been drug tested in accordance with the DOT Procedures before the employee returns to duty.

* * * * *

Issued in Washington, DC, on December 7, 1989.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 89-29186 Filed 12-15-89; 8:45 am]

BILLING CODE 4910-60-M

federal register

Monday
December 18, 1989

Part V

Department of Health and Human Services

Public Health Service

42 CFR Part 57

Nursing Student Loan Program; Notice Of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

RIN: 0905-AC76

Nursing Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend existing regulations governing the Nursing Student Loan (NSL) program to require schools to: (1) Invest their NSL funds and return earnings from the investments to the NSL funds; (2) identify and return to the Department excess cash from the NSL funds; and (3) determine the collectibility of defaulted loans and either obtain approval to write off the loans or reimburse the fund in the amount of the loans. However, schools would not be required to obtain write-off approval or reimburse the fund for loans that became uncollectible prior to January 1, 1983. The Department believes that these revisions will enhance its enforcement capabilities for improving the cash management practices of schools participating in the NSL program.

DATE: Comments on this proposed rule are invited. To be considered, comments must be received no later than February 16, 1990.

ADDRESSES: Written comments should be addressed to Paul M. Schwab, Acting Director, Bureau of Health Professions, room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Development, BHPr, room 8A-55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley A. Zimmerman, Chief, Program Accounting and Analysis Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8-34, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443-1700.

SUPPLEMENTARY INFORMATION: The Department has had concerns over the cash management practices of the schools participating in the NSL program. Of particular concern to the Department is that in many cases, schools are not returning income earned from investment of the funds' cash balances to the NSL fund or are not investing the idle cash that is in the funds, are maintaining balances in the funds in excess of their needs, and are carrying uncollectible loans on their books for long periods of time. These problems were recently highlighted by various assessments conducted by the Health Resources and Services Administration (HRSA), extensive cash management audits performed by the Department's Office of the Inspector General (OIG), and a study conducted by the General Accounting Office (GAO).

Many schools are not properly crediting earnings from invested funds to the appropriate NSL fund as required by statute. Specifically, section 835(b)(2)(E) of the Public Health Service Act (the Act) requires that schools deposit in the fund "* * * any other earnings of the fund." This requirement is also included in the terms of agreement which all schools sign to paritipcate in the program. Although this requirement has been in existence since the inception of the program, many schools whose funds are invested, and especially whose funds are pooled for investment with other university or State funds, are not properly crediting the proportionate share of investment earnings to the NSL fund(s).

In other instances, schools are not investing and earning interest on cash balances. HRSA policy guidance states that when there is a delay between the time funds are received and disbursed to students, schools must invest cash balances in insured, interest-bearing accounts. When schools fail to properly invest program funds and return income earned to the loan fund, needy students are deprived of additional funds for new loans. In response to these concerns, the Department is proposing to amend the regulations to require that a school maintain all monies relating to the NSL fund in one or more interest-bearing accounts that are insured by an agency of the Federal Government, or invest in income-producing securities issued or guaranteed by the United States and assure that all earnings become a part of the fund.

The Department is also concerned that schools are maintaining cash balances in excess of their needs despite efforts to monitor, through the Department's annual operating and debt management reports, the level of cash balances being maintained by the schools. As a part of the Department's required semi-annual reports, each active school is instructed to determine whether it has excess cash by comparing its projected levels of expenditures and collections with the fund balance and to return any excess cash to the Department. A school in closing status must review the balance in the fund as a part of required quarterly reports. Excess cash returned to the Department is reallocated to NSL schools, with priority to schools that established NSL funds after September 30, 1975.

To strengthen the Department's ability to assure that excess cash is properly identified and returned to the Federal Government, the Department is proposing to make explicit in these regulations the requirement that a school must review, on at least a semi-annual basis, its cash balance to identify any monies in excess of its needs and return the Federal Government's share of the excess amount to the Department. The regulations would also make explicit the Secretary's authority to make the final determination as to whether excess cash exists. Additionally, they would provide that a school which fails to comply with these requirements will be subject to the noncompliance provisions set forth in § 57.318 and to the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

A final concern of the Department with schools' cash management practices is that many schools are not making determinations on the collectibility of their defaulted loans. They are neither requesting write-off of these defaulted loans where due diligence can be documented, nor reimbursing the NSL fund for the remaining amount owed on the loan where due diligence was not followed or cannot be documented. The result of this practice is that the amount of loan funds available for loans to needy nursing students is less than it could be. Accordingly, the Department is proposing to establish timeframes within which nursing schools must determine the collectibility of defaulted loans and request write-off approval for those uncollectible loans for which due diligence can be documented. The Department is also proposing to set timeframes within which the school must reimburse the fund or the Department (if the school is in closing status) for those loans for which due diligence was not followed or cannot be documented. Schools will not be required to request write-off approval or to reimburse the fund for loans that became uncollectible (i.e., loans on which payments were 2 or more years past due) prior to January 1, 1983, consistent with the Nursing Shortage Reduction and Education Extension Act

of 1988, (title VII of Pub. L. 100-607), enacted on November 4, 1988.

The Department believes that these revisions will enhance its enforcement capabilities for improving the cash management practices of schools participating in the NSL program.

Interested persons are invited to submit written comments on these proposed revisions to the NSL regulations. Written comments should be directed to the Director of the Bureau of Health Professions at the address given above.

The proposed revisions are discussed below according to the section numbers and headings affected.

Section 57.305 Nursing Student Loan Funds

Paragraph (a) of this section states in part that any fund established by a school with Federal capital contributions will be deposited and carried in a special account of the school with the institutional capital contribution represented at all times. This notice proposes to require that schools must at all times maintain all monies relating to the fund in one or more interest-bearing accounts that are insured by an agency of the Federal Government, or invest in income-producing securities issued or guaranteed by the United States, and assure that all earnings become a part of the fund. The school must place all earnings into the fund, but may first deduct from total earnings any reasonable and customary charge incurred through the use of an interest-bearing account. Additionally, these regulations will require that the school must exercise the level of care required of a fiduciary with regard to these deposits and investments.

The second proposed revision to this paragraph would make explicit in regulations the requirements that a school must review the balance in the fund on at least a semi-annual basis to determine whether the fund balance compared with projected levels of expenditures and collections exceeds its needs and that a school in closing status must review the balance in the fund on a quarterly basis. It would also state explicitly that monies identified as exceeding the school's needs must be reported, and the Federal share returned to the Federal Government, by the due date of the required report which identifies the excess monies. The proposed timeframes are consistent with most schools' existing planning cycles and the Department's current reporting requirements on excess cash. This proposed amendment would also state that the school's determination of whether it has excess cash is subject to the review and approval of the Secretary.

Finally, a new paragraph (c) is being added to make clear that a school which fails to comply with the requirements of this section will be subject to the noncompliance provisions of § 57.318 and the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

Section 57.310 Repayment of Collection of Nursing Student Loans

Paragraph (b)(4) of this section states in part that a school may request write-off approval of uncollectible loans and that where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, the school will be required to place in the fund the full amount of the loan that remains uncollected. If write-off approval is granted, the school is not required to reimburse the Federal Government for its share of the remaining principal, interest, and penalty charges on the loan. This notice proposes to revise the paragraph to require a school to classify any loan on which payments are 2 or more years past due as uncollectible unless the loan is the subject of an open court case and either to place the full amount of the uncollectible loan into the fund or to submit the loan for write-off approval within 30 days of the determination that it is uncollectible. In the event that a school is holding a loan which would be "uncollectible," according to the proposed regulations, at the time the regulations become final, the school would be required to submit the loan for write-off approval within 30 days of the effective date of the regulations or reimburse the fund within timeframes described below. A school would be permitted to determine a loan to be uncollectible sooner than 2 years past due only when it has evidence supporting this determination. In no case however, would a school be permitted to consider a loan uncollectible if the loan has not been in default for at least 120 days, in accordance with the default formula in section 835(c) of the Act on which a school's participation in the program is based. Schools will not be required to obtain write-off approval or reimburse the fund for loans which became uncollectible (i.e., on which payments were 2 or more years past due) prior to January 1, 1983, consistent with Public Law 100-607, enacted on November 4, 1988. The Department notes that there is nothing to prevent a school from further pursuing the collection of a loan that has been determined to be uncollectible, when the school has knowledge of changes in a borrower's financial situation. Any such amounts recovered are required to be deposited into the fund and reported to the Department.

The 2-year period for attempting to collect a loan is based on a reasonable time period for compliance with the regulatory due diligence requirements set forth in this section, which typically could include 4 months of initial followup by the school, a 9-month period of collection efforts by commercial collection agents, and an additional extended period for litigation. It is also consistent with criteria used by the Department's OIG in conducting extensive cash management audits at participating schools. The proposed rule would also require that upon determination by a school that a loan is uncollectible or upon receipt of a denial of a request for write-off approval, the school must reimburse the fund by the following June 30 or December 31, whichever is sooner, for the remaining balance on the loan; however, in no case would a school be required to reimburse the fund in less than 30 days. The Department expects that tying the timeframe for reimbursing the fund to current reporting requirements will facilitate the Department's monitoring of a school's compliance and will allow a reasonable time for schools to secure the institutional funds necessary to repay the NSL fund.

Finally, the regulations would state that any school which fails to comply with these reimbursement requirements, except for loans that became uncollectible prior to January 1, 1983, will be subject to the noncompliance provisions of § 57.318 and the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the requirements in this proposed regulation are minimal. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that this regulation will not have a significant impact on a substantial number of nursing schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will now exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

Paperwork Reduction Act

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Nursing Student Loan Program: Cash Management.

Description: Schools must report and return excess cash on a semi-annual basis and request permission to write off uncollectible loans or reimburse the loan fund in the full amount of the uncollectible loan.

Description of Respondents: Public or other non-profit institutions.

Estimated Annual Reporting Burden:

Section requirement	Annual No. of respondents	Annual frequency	Average burden per response	Annual burden hours
57.305(a)(2)	The burden associated with this regulatory requirement is included in the Annual Operating Report and the Debt Management Report—OMB Clearance Nos. 0915–0044 and 0915–0046)			
57.310(b)(4)	200	800 requests	30 min.	400 hrs.

We have submitted a copy of this proposed rule to OMB for its review of this information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, and Student aid.

Accordingly, subpart D of 42 CFR part 57 is proposed to be amended as follows:

(Catalog of Federal Domestic Assistance, No. 13.364, Nursing Student Loan Program)

Dated: May 5, 1989.

James O. Mason,

Assistant Secretary for Health.

Approved: November 16, 1989.

Louis W. Sullivan,

Secretary.

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENT, SCHOLARSHIPS AND STUDENT LOANS

Subpart D—Nursing Student Loans

1. The authority for subpart D is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, 67 Stat. 631, (42 U.S.C. 216); sections 835–842 Public Health Service Act, 78 Stat. 913–916, as amended, 99 Stat. 397–400, 536–537, and as amended by 102 Stat. 3160–3161 (42 U.S.C. 297a–i).

2. Section 57.305 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 57.305 Nursing student loan funds.

(a) *Funds established with Federal capital contributions.* Any fund established by a school with Federal capital contributions will be deposited and carried in a special account of the school. At all times the fund must contain monies representing the institutional capital contribution. The school must at all times maintain all monies relating to the fund in one or more interest-bearing accounts that are insured by an agency of the Federal Government or invest such monies in income-producing securities issued or guaranteed by the United States. The school must place all earnings into the fund but may first deduct from total earnings any reasonable and customary charge incurred through the use of an interest-bearing account. An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(1) The Federal capital contribution fund is to be used by the school only for:

(i) Nursing student loans to full-time or half-time students;

(ii) Capital distribution as provided in section 839 of the Act or as agreed to by the school and the Secretary; and

(iii) Costs of litigation, costs associated with membership in credit bureaus, and to the extent specifically approved by the Secretary, other collection costs that exceed the usual expenses incurred in the collection of nursing student loans;

(2) A school must review the balance in the fund on at least a semi-annual basis to determine whether the fund balance compared with projected levels of expenditures and collections exceeds its needs. A school in closing status must review the balance in the fund on a quarterly basis. Monies identified as in excess of the school's needs must be reported, and the Federal share returned to the Federal Government, by the due date of the required report which identifies the excess monies. The school's determination is subject to the review and approval of the Secretary.

* * * * *

(c) Failure to comply with the requirements of this section will subject a school to the noncompliance provisions of § 57.318 and the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

3. Section 57.310 is amended by revising paragraph (b)(4) to read as follows:

§ 57.310 Repayment and collection of nursing student loans.

* * * * *

(b) * * *

(4) A school must review and assess the collectibility of its loans to determine which loans it considers uncollectible. A school must consider as uncollectible any loan on which payments are 2 or more years past due. A school may determine a loan to be uncollectible sooner when it has evidence that the loan cannot be collected, but in no case should a school consider a loan as uncollectible if it has not been in default for at least 120 days. A school is not subject to the requirements in paragraph (b)(4) (i) and (iii) of this section for loans that became uncollectible (i.e., loans on which payments were 2 or more years past due) prior to January 1, 1983.

(i) A school must request permission to write off an uncollectible loan within 30 days of the determination that it is

uncollectible or reimburse the fund in the full amount of the loan, pursuant to § 57.310(b)(4)(iii). In any instance where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the school will be required to place in the fund an amount equal to the full amount of principal, interest, and penalty charges that remains uncollected on the loan. This reimbursement must be made by the following June 30 or December 31, whichever is sooner, except that in no case will a school be required to reimburse the fund in less than 30 days following the Secretary's determination that it failed to exercise due diligence.

(ii) If the Secretary determines that a school has exercised due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the school will be permitted to reduce its accounts receivable for the NSL fund by the full amount of principal, interest, and penalty charges that remains uncollected on that loan and will not be required to return the Federal share of the loss to the Secretary.

(iii) If a school does not request permission to write off an uncollectible loan within the required timeframe, it must reimburse the fund for the full amount of principal, interest, and penalty charges that remains uncollected on that loan. This reimbursement must be made by the following June 30 or December 31, whichever is sooner, except that in no case will a school be required to reimburse the fund in less than 30 days following its determination that a loan is uncollectible.

(iv) Failure to comply with the requirements of this section will subject a school to the noncompliance provisions of § 57.318 and the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

* * * * *

[FR Doc. 89-28840 Filed 12-15-89; 8:45 am]
BILLING CODE 4160-15-M

federal register

Monday
December 18, 1989

Part VI

Department of Health and Human Services

Public Health Service

42 CFR Part 57

Health Professions Student Loan Program; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 57

RIN: 0905-AC78

Health Professions Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend existing regulations governing the Health Professions Student Loan (HPSL) program to require schools to: (1) Invest their HPSL funds and return earnings from the investments to the HPSL funds; (2) identify and return to the Department excess cash from the HPSL funds; and (3) determine the collectibility of defaulted loans and either obtain approval to write off the loans or reimburse the fund in the amount of the loans. However, schools would not be required to obtain write-off approval or reimburse the fund for loans that became uncollectible before August 1, 1985. The Department believes that these revisions will enhance its enforcement capabilities for improving the cash management practices of schools participating in the HPSL program.

DATE: Comments on this proposed rule are invited. To be considered, comments must be received no later than February 16, 1990.

ADDRESSES: Written comments should be addressed to Paul M. Schwab, Acting Director, Bureau of Health Professions, Room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Development, BHPr, Room 8A-55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley A. Zimmerman, Chief, Program Accounting and Analysis Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8-34, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301-443-1700.

SUPPLEMENTARY INFORMATION: The Department has had concerns over the cash management practices of the schools participating in the HPSL program. Of particular concern to the Department is that in many cases, schools are not returning income earned from investment of the funds' cash balances to the HPSL fund or are not investing the idle cash that is in the funds, are maintaining balances in the funds in excess of their needs, and are carrying uncollectible loans on their books for long periods of time. These problems were recently highlighted by various assessments conducted by the Health Resources and Services Administration (HRSA), extensive cash management audits performed by the Department's Office of the Inspector General (OIG), and a study conducted by the General Accounting Office (GAO).

Many schools are not properly crediting earnings from invested funds to the appropriate HPSL fund as required by statute. Specifically, section 740(b)(2)(E) of the Public Health Service Act (the Act) requires that schools deposit in the fund "* * * any other earnings of the fund." This requirement is also included in the terms of agreement which all schools sign to participate in the program. Although this requirement has been in existence since the inception of the program, many schools whose funds are invested, and especially whose funds are pooled for investment with other university or State funds, are not properly crediting the proportionate share of investment earnings to the HPSL fund(s).

In other instances, schools are not investing and earning interest on cash balances. HRSA policy guidance states that when there is a delay between the time funds are received and disbursed to students, schools must invest cash balances in insured, interest-bearing accounts. When schools fail to properly invest program funds and return income earned to the loan fund, needy students are deprived of additional funds for new loans. In response to these concerns, the Department is proposing to amend the regulations to require that a school maintain all monies relating to the HPSL fund in one or more interest-bearing accounts that are insured by an agency of the Federal Government, or invest in income-producing securities issued or guaranteed by the United States and assure that all earnings become a part of the fund.

The Department is also concerned that schools are maintaining cash balances in excess of their needs despite efforts to monitor, through the Department's annual operating and debt management reports, the level of cash balances being maintained by the schools. As a part of the Department's required semi-annual reports, each active school is instructed to determine whether it has excess cash by comparing its projected levels of expenditures and collections with the fund balance and to return any excess cash to the Department. A school in closing status must review the balance in the fund as a part of required quarterly reports. Excess cash returned to the Department is reallocated to HPSL schools, with priority to schools that established HPSL funds between July 1, 1972 and September 30, 1985.

To strengthen the Department's ability to assure that excess cash is properly identified and returned to the Federal Government, the Department is proposing to make explicit in these regulations the requirement that a school must review, on at least a semi-annual basis, its cash balance to identify any monies in excess of its needs and return the Federal Government's share of the excess amount to the Department. The regulations would also make explicit the Secretary's authority to make the final determination as to whether excess cash exists. Additionally, they would provide that a school which fails to comply with these requirements will be subject to the noncompliance provisions set forth in § 57.218 and to the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

A final concern of the Department with schools' cash management practices is that many schools are not making determinations on the collectibility of their defaulted loans. They are neither requesting write-off of these defaulted loans where due diligence can be documented, nor reimbursing the HPSL fund for the remaining amount owed on the loan where due diligence was not followed or cannot be documented. The result of this practice is that the amount of loan funds available for loans to needy health professions students is less than it could be. Accordingly, the Department is proposing to establish timeframes within which health professions schools must determine the collectibility of defaulted loans and request write-off approval for those uncollectible loans for which due diligence can be documented. The Department is also proposing to set timeframes within which the school must reimburse the fund or the Department (if the school is in closing status) for those loans for which due diligence was not followed or cannot be documented. Schools will not be required to request write-off approval or to reimburse the fund for loans that became uncollectible (i.e., loans on which payments were 2 or more years past due) before August 1, 1985, consistent with the Health Professions Reauthorization Act of 1988, (title VI of

Pub. L. 100–607), enacted on November 4, 1988.

The Department believes that these revisions will enhance its enforcement capabilities for improving the cash management practices of schools participating in the HPSL program.

Interested persons are invited to submit written comments on these proposed revisions to the HPSL regulations. Written comments should be directed to the Director of the Bureau of Health Professions at the address given above.

The proposed revisions are discussed below according to the section numbers and headings affected.

Section 57.205 Health professions student loan funds.

Paragraph (a) of this section states in part that any fund established by a school with Federal capital contributions will be deposited and carried in a special account of the school with the institutional capital contribution represented at all times. This notice proposes to require that schools must at all times maintain all monies relating to the fund in one or more interest-bearing accounts that are insured by an agency of the Federal Government, or invest in income-producing securities issued or guaranteed by the United States, and assure that all earnings become a part of the fund. The school must place all earnings into the fund, but may first deduct from total earnings any reasonable and customary charge incurred through the use of an interest-bearing account. Additionally, these regulations will require that the school must exercise the level of care required of a fiduciary with regard to these deposits and investments.

The second proposed revision to this paragraph would make explicit in regulations the requirements that a school must review the balance in the fund on at least a semi-annual basis to determine whether the fund balance compared with projected levels of expenditures and collections exceeds its needs and that a school in closing status must review the balance in the fund on a quarterly basis. It would also state explicitly that monies identified as exceeding the school's needs must be reported, and the Federal share returned to the Federal Government, by the due date of the required report which identifies the excess monies. The proposed timeframes are consistent with most schools' existing planning cycles and the Department's current reporting requirements on excess cash. This proposed amendment would also state that the school's determination of whether it has excess cash is subject to the review and approval of the Secretary.

Finally, a new paragraph (c) is being added to make clear that a school which fails to comply with the requirements of this section will be subject to the noncompliance provisions of § 57.218 and the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

Section 57.210 Repayment and collection of health professions student loans.

Paragraph (b)(4) of this section states in part that a school may request write-off approval of uncollectible loans and that where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, the school will be required to place in the fund the full amount of the loan that remains uncollected. If write-off approval is granted, the school is not required to reimburse the Federal Government for its share of the remaining principal, interest, and penalty charges on the loan. This notice proposes to revise the paragraph to require a school to classify any loan on which payments are 2 or more years past due as uncollectible unless the loan is the subject of an open court case and either to place the full amount of the uncollectible loan into the fund or to submit the loan for write-off approval within 30 days of the determination that it is uncollectible. In the event that a school is holding a loan which would be "uncollectible," according to the proposed regulations, at the time the regulations become final, the school would be required to submit the loan for write-off approval within 30 days of the effective date of the regulations or reimburse the fund within timeframes described below. A school would be permitted to determine a loan to be uncollectible sooner than 2 years past due only when it has evidence supporting this determination. In no case however, would a school be permitted to consider a loan uncollectible if the loan has not been in default for at least 120 days, in accordance with the default formula in section 740(c) of the Act on which a school's participation in the program is based. Schools will not be required to obtain write-off approval or reimburse the fund for loans which became uncollectible (i.e., on which payments were 2 or more years past due) before August 1, 1985, consistent with Public Law 100–607, enacted on November 4, 1988. The Department notes that there is nothing to prevent a school from further pursuing the collection of a loan that has been determined to be uncollectible, when the school has knowledge of changes in a borrower's financial situation. Any such amounts recovered are required to be deposited into the fund and reported to the Department.

The 2-year period for attempting to collect a loan is based on a reasonable time period for compliance with the regulatory due diligence requirements set forth in this section, which typically could include 4 months of initial followup by the school, a 9-month period of collection efforts by commercial collection agents, and an additional extended period for litigation. It is also consistent with criteria used by the Department's OIG in conducting extensive cash management audits at participating schools. The proposed rule would require that upon determination by a school that a loan is uncollectible or upon receipt of a denial of a request for write-off approval, the school must reimburse the fund by the following June 30 or December 31, whichever is sooner, for the remaining balance on the loan; however, in no case would a school be required to reimburse the fund in less than 30 days. The Department expects that tying the timeframe for reimbursing the fund to current reporting requirements will facilitate the Department's monitoring of a school's compliance and will allow a reasonable time for schools to secure the institutional funds necessary to repay the HPSL fund.

Finally, the regulations would state that any school which fails to comply with these reimbursement requirements, except for loans that became uncollectible before August 1, 1985, will be subject to the noncompliance provisions of § 57.218 and the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the requirements in this proposed regulation are minimal. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that this regulation will not have a significant impact on a substantial number of health professions schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will not exceed the threshold level of $100

million established in section (b) of Executive Order 12291.

Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Health Professions Student Loan Program: Cash Management.

Description: Schools must report and return excess cash on a semi-annual basis and request permission to write off uncollectible loans or reimburse the loan fund in the full amount of the uncollectible loan.

Description of Respondents: Public or other non-profit institutions.

Estimated Annual Reporting Burden:

Section requirement	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
57.205(a)(2)	(The burden associated with this regulatory requirement is included in the Annual Operating Report and the Debt Management Report—OMB Clearance Nos. 0915–0044 and 0915–0046)			
57.210(b)(4)(i)	60	120 requests	30 min	60 hrs.

We have submitted a copy of this proposed rule to OMB for its review of these information collections. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, subpart C of 42 CFR part 57 is proposed to be amended as follows:

Dated: May 5, 1989.

James O. Mason,

Assistant Secretary for Health.

Approved: November 16, 1989.

Louis W. Sullivan,

Secretary.

(*Catalog of Federal Domestic Assistance*, No. 13.342, Health Professions Student Loan Program)

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENT, SCHOLARSHIPS AND STUDENT LOANS

Subpart C—Health Professions Student Loans

1. The authority for subpart C is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 740–747, Public Health Service Act, 77 Stat. 170–173, 90 Stat. 2266–2268, 91 Stat. 390–391, 95 Stat. 920, 99 Stat. 532–536, 102 Stat. 3125 (42 U.S.C. 294m–q).

2. Section 57.205 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 57.205 Health professions student loan funds.

(a) *Funds established with Federal capital contributions.* Any fund established by a school with Federal capital contributions will be deposited and carried in a special account of the school. At all times the fund must contain monies representing the institutional capital contribution. The school must at all times maintain all monies relating to the fund in one or more interest-bearing accounts that are insured by an agency of the Federal Government or invest such monies in income-producing securities issued or guaranteed by the United States. The school must place all earnings into the fund but may first deduct from total earnings any reasonable and customary charge incurred through the use of an interest-bearing account. An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(1) The Federal capital contribution fund is to be used by the school only for:

(i) Health professions student loans to full-time students;

(ii) Capital distribution as provided in section 743 of the Act or as agreed to by the school and the Secretary; and

(iii) Costs of litigation, costs associated with membership in credit bureaus, and to the extent specifically approved by the Secretary, other collection costs that exceed the usual expenses incurred in the collection of health professions student loans;

(2) A school must review the balance in the fund on at least a semi-annual basis to determine whether the fund balance compared with projected levels of expenditures and collections exceeds its needs. A school in closing status must review the balance in the fund on a quarterly basis. Monies identified as in excess of the school's needs must be reported, and the Federal share returned to the Federal Government, by the due date of the required report which identifies the excess monies. The school's determination is subject to the review and approval of the Secretary.

* * * * *

(c) Failure to comply with the requirements of this section will subject a school to the noncompliance provisions of § 57.218 and the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

3. Section 57.210 is amended by revising paragraph (b)(4) to read as follows:

§ 57.210 Repayment and collection of health professions student loans.

* * * * *

(b)* * *

(4) A school must review and assess the collectibility of its loans to determine which loans it considers uncollectible. A school must consider as uncollectible any loan on which payments are 2 or more years past due. A school may determine a loan to be uncollectible sooner when it has evidence that the loan cannot be collected, but in no case should a school consider a loan as uncollectible if it has not been in default for at least 120 days. A school is not subject to the requirements in paragraphs (b)(4) (i) and

(iii) of this section for loans that became uncollectible (i.e., loans on which payments were 2 or more years past due) before August 1, 1985.

(i) A school must request permission to write off an uncollectible loan within 30 days of the determination that it is uncollectible or reimburse the fund in the full amount of the loan, pursuant to § 57.210(b)(4)(iii). In any instance where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the school will be required to place in the fund an amount equal to the full amount of principal, interest, and penalty charges that remains uncollected on the loan. This reimbursement must be made by the following June 30 or December 31, whichever is sooner, except that in no case will a school be required to reimburse the fund in less than 30 days following the Secretary's determination that if failed to exercise due diligence.

(ii) If the Secretary determines that a school has exercised due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the school will be permitted to reduce its accounts receivable for the HPSL fund by the full amount of principal, interest, and penalty charges that remains uncollected on that loan and will not be required to return the Federal share of the loss to the Secretary.

(iii) If a school does not request permission to write off an uncollectible loan within the required timeframe, it must reimburse the fund for the full amount of principal, interest, and penalty charges that remains uncollected on that loan. This reimbursement must be made by the following June 30 or December 31, whichever is sooner, except that in no case will a school be required to reimburse the fund in less than 30 days following its determination that a loan is uncollectible.

(iv) Failure to comply with the requirements of this section will subject a school to the noncompliance provisions of § 57.218 and the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

* * * * *

[FR Doc. 89-28841 Filed 12-15-89; 8:45 am]
BILLING CODE 4160-15-M

federal register

Monday
December 18, 1989

Part VII

The President

Proclamation 6084—Wright Brothers Day, 1989

Federal Register
Vol. 54, No. 241
Monday, December 18, 1989

Presidential Documents

Title 3—

The President

Proclamation 6084 of December 14, 1989

Wright Brothers Day, 1989

By the President of the United States of America

A Proclamation

Less than a century ago, Orville and Wilbur Wright ushered in the age of modern aviation with the first sustained, manned flight in a mechanically propelled aircraft. Although their flight lasted only 12 seconds and spanned only 120 feet over the windy beach at Kitty Hawk, North Carolina, it began an exciting process of design, trial, and discovery that continues to this day.

Today, as we recall the historic events of that cold, windy December afternoon in 1903, we also celebrate the tremendous progress in aviation that has been made during the past 86 years. Advances in air transportation have linked nations and continents, bringing the peoples of the world ever closer together. Man has journeyed into space, and American astronauts have walked on the moon. Now we are shaping further plans for manned space flight beyond Earth's orbit and into the solar system.

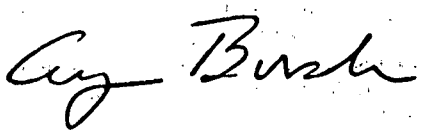
By the end of this year, Americans will have used commercial aircraft more than 475 million times to travel around the country and around the world. Only 86 years after the Wright brothers took to the skies with their bold yet tentative flight, we are able to travel millions of miles with confidence and ease.

On Wright Brothers Day, we salute all the courageous pioneers who, with vision and determination, have made these great advances possible. In so doing, they have not only helped make American aviation a model for the world but also led the way to the exploration of our universe.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 169), has designated the 17th day of December of each year as "Wright Brothers Day" and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim December 17, 1989, as Wright Brothers Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of December, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-29560
Filed 12-15-89; 10:59 am]
Billing code 3195-01-M

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 91/Pub. L. 101-222

Anti-Terrorism and Arms Export Amendments Act of 1989. (Dec. 12, 1989; 103 Stat. 1892; 9 pages) Price: $1.00

H.R. 1502/Pub. L. 101-223

District of Columbia Police Authorization and Expansion Act of 1989. (Dec. 12, 1989; 103 Stat. 1901; 4 pages) Price: $1.00

H.R. 1668/Pub. L. 101-224

National Oceanic and Atmospheric Administration Ocean and Coastal Programs Authorization Act of 1989. (Dec. 12, 1989; 103 Stat. 1905; 3 pages) Price: $1.00

H.R. 2459/Pub. L. 101-225

Coast Guard Authorization Act of 1989. (Dec. 12, 1989; 103 Stat. 1908; 20 pages) Price: $1.00

H.R. 3614/Pub. L. 101-226

Drug-Free Schools and Communities Act Amendments of 1989. (Dec. 12, 1989; 103 Stat. 1928; 15 pages) Price: $1.00

H.R. 3629/Pub. L. 101-227

Extending the authority of the Secretary of Commerce to conduct the quarterly financial report program under section 91 of title 13, United States Code, through September 30, 1993. (Dec. 12, 1989; 103 Stat. 1943; 2 pages) Price: $1.00

H.J. Res. 449/Pub. L. 101-228

Providing for the convening of the second session of the One Hundred First Congress. (Dec. 12, 1989; 103 Stat. 1945; 1 page) Price: $1.00

H.R. 1727/Pub. L. 101-229

Everglades National Park Protection and Expansion Act of 1989. (Dec. 13, 1989; 103 Stat. 1946; 7 pages) Price: $1.00

H.R. 2178/Pub. L. 101-230

To designate lock and dam numbered 4 on the Arkansas River, Arkansas, as the "Emmett Sanders Lock and Dam". (Dec. 13, 1989; 103 Stat. 1953; 1 page) Price: $1.00

H.R. 3611/Pub. L. 101-231

International Narcotics Control Act of 1989. (Dec. 13, 1989; 103 Stat. 1954; 13 pages) Price: $1.00

H.R. 3670/Pub. L. 101-232

To authorize the expansion of the membership of the Superior Court of the District of Columbia from 50 associate judges to 58 associate judges. (Dec. 13, 1989; 103 Stat. 1967; 1 page) Price: $1.00

S. 804/Pub. L. 101-233

North American Wetlands Conservation Act. (Dec. 13, 1989; 103 Stat. 1968; 11 pages) Price: $1.00

H.R. 3607/Pub. L. 101-234

Medicare Catastrophic Coverage Repeal Act of 1989. (Dec. 13, 1989; 103 Stat. 1979; 8 pages) Price: $1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.